SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 566

STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, ETC., APPELLANT,

vs.

PRESTON DELANO, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. a]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN

CALENDAR ENTRIES

1946

June 25. Petition For Declaratory Judgment filed.

June 25. Summons Issued.

June 25. Order To Show Cause—Returnable July 8, 1946 and Temporary Restraining Order filed and entered—Lederle, J.

June 28. Appearance of Joseph T. Connolly filed.

June 28. Stipulation Re Order to Show Cause etc. filed.

June 28. Order Dissolving Restraining Order and Dismissing Order To Show Cause filed and entered—Lederle, J.

July 2. Summons returned and filed.

July 12. Stipulation for extension of time filed.

July 12. Order for Extension of time of Connolly, Rec. to Plead to and including July 31/46 filed and entered—Lederle, J.

July 29. Stipulation for extension of time filed.

July 29. Order for Extension of time of Connolly, Rec. to Plead to and including Aug. 15/46 filed and entered—Lederle, J.

August 13. Special Appearance of Preston Delano, etc. and Motion to Quash Service of Process and to Dismiss Action filed.

August 13. Motion on behalf of Defendant Joseph T. Connolly to Dismiss the Plaintiff's Petition filed.

August 29. Additional Summons Issued.

September 3. Affidavit of R. B. McCandless in support of Motion to Dismiss filed.

September 11. Summon returned and filed.

[fol. b]

1947

May 2. Notice of Hearing on Motion to Dismiss for June 2/47 filed.

May 2. Affidavit of Proof of Mailing filed.

June 9. Order Sub. Pltf. and Atty. for Pltf. filed and entered—Lederle, J.

1947

June 9. Motion to Dismiss heard in part and cont'd to June 23/47 for briefs.

June 23. Motion to Dismiss cont'd to July 14/47 by Consent.

June 23. Defts. granted until July 14/47 for submitting Reply to Pltfs. Reply brief.

July 10. Order of Dismissal and Proof of Mailing filed. Order entered—Lederle, J.

September 4. Order Correcting Docket Entries of June 9 and 23/47 filed and entered—Lederle, J.

September 4. Proof of Mailing filed.

October 2. Notice of Appeal of Pltf. filed.

October 2. Bond on Appeal in $250.00 filed. U. S. Fidelity and Guaranty Co.

October 3. Proof of Mailing filed.

October 9. Designation of Contents of Record on Appeal filed.

October 9. Proof of Service filed.

November 7. Stipulation and Order extending time to file Record on Appeal to Dec. 7/47 filed. Order entered—Lederle, J.

November 7. Stipulation Re Comparison of Record filed.

November 7. Stipulation as to Additional Contents of Record on Appeal filed.

[fol. 1] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil No. 5824

JOHN R. DETHMERS, Attorney General, in the name and on behalf of the People of the State of Michigan, Plaintiff,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and Joseph T. Connolly, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, Defendants

PETITION FOR DECLARATORY JUDGMENT AND OTHER RELIEF—Filed June 25, 1946

Now comes John R. Dethmers, petitioner, and respectfully represents unto this Honorable Court as follows:

[fol. 2]

I

That he is the Attorney General of the State of Michigan and files this petition in the name of and on behalf of the People of the State of Michigan.

II

That Preston Delano, one of the defendants herein, is the Comptroller of the Currency of the United States of America, and, as such, is vested with supervisory control over all National banks and particularly over his co-defendant, Joseph T. Connolly, both in his capacity as Receiver of the First National Bank-Detroit, a National Banking association and as Detroit Representative of the Comptroller of the Currency of the United States of America.

III

That Joseph T. Connolly, one of the defendants herein, is the Detroit Representative of the Comptroller of the Currency of the United States of America and the present Receiver of the First National Bank-Detroit, a National Banking Association.

IV

That the said First National Bank-Detroit, a National Banking Association, was organized under the laws of the United States of America, with its principal place of business in the City of Detroit, County of Wayne, State of Michigan, in the Eastern District of Michigan, Southern Division; that the said bank did, on February 11, 1933 close its doors at the close of business of said day and did not thereafter resume the conduct of normal banking business; that on March 13, 1933, F. G. Awalt, the Acting Comptroller [fol. 3] of the Currency of the United States, acting under authority of the Act of Congress known as the Bank Conservation Act, having found that said First National Bank-Detroit was unable to transact and carry on its ordinary banking business or exercise its usual banking functions without prejudice to the rights of depositors and other creditors, appointed Paul C. Keyes Conservator thereof; that said Paul C. Keyes, acting under the direction of the Acting Comptroller of the Currency, took possession of all of the books, records and assets of said bank and continued in possession thereof until March 21, 1933, when he resigned; that thereupon the Acting Comptroller of the Currency appointed C. O. Thomas as Conservator and who immediately entered upon the duties of said office and took over from the said Keyes all of the books, records and assets of every description of said First National Bank-Detroit, and remained in exclusive possession and control thereof as such Conservator until May 11, 1933; that on said last mentioned date the Acting Comptroller of the Currency, having found and declared said First National Bank-Detroit to be insolvent and unable to pay its just and legal debts and obligations, appointed C. O. Thomas Receiver of said bank, pursuant to the statutes of the United States in such case made and provided; that thereafter said C. O. Thomas resigned as Receiver of said bank, the said resignation to be effective as of August 15, 1934; that B. C. Schram was appointed by the Comptroller of the Currency to succeed said C. O. Thomas as Receiver of said Bank, said appointment to be effective as of August 15, 1934; and that thereafter said B. C. Schram resigned as Receiver of said bank, the said resignation to be effective as of close of business on June 15, 1944; that Joseph T. Connolly, one of the defendants herein, was appointed by

the Comptroller of the Currency to succeed said B. C. Schram as Receiver of said Bank, said appointment to be effective as of close of business on June 15, 1944; and that [fol. 4] since said date the said defendant has been and now is the duly appointed, qualified and acting Receiver of the First National Bank-Detroit; that the said defendant, Joseph T. Connolly and/or his predecessors, were charged with the duty, under the direction of the Comptroller of the Currency, to collect all debts, dues and claims belonging to said bank; and, as your petitioner is informed and verily believes, did so exercise and discharge their duties in this regard.

V

That your petitioner is informed and verily believes, that the said Joseph T. Connolly, one of the defendants herein, and/or his predecessors in office, while acting in the capacity of Receiver of the First National Bank-Detroit, a National Banking Association, did cause notice to be given to all claimants, creditors and depositors of said insolvent bank, in accordance with the provisions of Section 193, Title 12 U. S. C., by advertisement duly published in qualified newspapers in the City of Detroit, County of Wayne and State of Michigan, calling on all such persons to present their claims, if any they had, and to make legal proof thereof as set forth in the National Bank Act, hereinbefore referred to.

VI

That your petitioner is informed and verily believes, that pursuant to said notice that the majority of the claimants, creditors and depositors of said insolvent bank, did make, present and file proof of claim with said defendant Receiver and/or his predecessors; and that said proofs of claims were duly passed upon, adjudicated and approved as valid claims against said insolvent bank, by said defendant Receiver, and/or his predecessors and by the Comptroller of the Currency of the United States.

[fol. 5] VII

That your petitioner is informed and verily believes, that as assets of said insolvent bank were collected and liquidated by the said defendant Receiver, and/or his predecessors, dividends were declared and made payable to those

said claimants, creditors and depositors who had previously filed proofs of claims and which claims had been approved as hereinbefore set forth, said dividends being the amount and payable on dates as follows:

Dividend No.	Date Payable	Percentage of Claim	
1	April 12, 1933	40%	
2	November 15, 1933	10%	
3	November 30, 1934	20%	
4	May 16, 1938	10%	
5	November 1, 1940	20%	100%
6 (Int.)	December 7, 1942	7.565%	

VIII

That your petitioner is informed and verily believes, that subsequent to the filing of proofs of claim as aforesaid, that said defendant Receiver, and/or his predecessors, did issue dividend checks to the several above mentioned claimants, from time to time as said dividends accrued and were declared; that great numbers of said checks were returned unclaimed, could not be delivered to the persons entitled thereto, or were delivered to the persons entitled thereto but were not presented for payment by such persons, and which said checks or the funds allocated for the payment thereof now remain in the possession and under the control of the said defendant Receiver and the Comptroller of the Currency of the United States of America.

IX

[fol. 6] That by the provisions of Act No. 238, of the Public Acts of the State of Michigan for 1897, and amendments thereto, entitled, "An Act to provide for the discovery by the State Board of Escheats or the Attorney General of escheated and escheatable estates, including abandoned property, and providing the procedure to declare such property escheated to the state, and for the disposition thereof, and declaring the statute of limitations not applicable to such proceedings", being Sections 13455 to 13477 both inclusive, Compiled Laws of Michigan for 1929, and Act No. 170, of the Public Acts of Michigan for the year 1941, it is made the duty of the Attorney General to protect the interests of the state in any unclaimed, uncalled for or abandoned

money, securities, credits or property of any kind, held by or in the possession or control of any person, or persons, as defined in said Act, in the name of or for the use and benefit of any other person, or persons, as defined in said Act; it is further made the duty of each person, within this state, who or which as a depository, as defined in said Act, is indebted or accountable to any other person, as defined in said Act, for money, credits, securities or property of any kind to make a report on the 30th day of June of every year to the State Board of Escheats, said report to contain the names of the persons entitled to said unclaimed, uncalled-for or abandoned money, securities, credits or property of any kind where there have been no dealings with said depository in relation to such unclaimed, uncalled for or abandoned property within a period of seven (7) years or more prior to the date of said Report, together with the amounts and nature of such unclaimed, uncalled for or abandoned property. A copy of said Act is attached hereto, made a part hereof, and marked, "Exhibit A," and to which reference is hereby prayed.

[fol. 7] X

That under the provisions of the said Acts and amendments thereto, as aforesaid, it is made the duty of your petitioner to see that such reports are properly made in the manner and time as hereinbefore provided, and, if the same are not filed as required, it is the further duty of your petitioner to take all proper steps to secure the proper making and filing of the same; the said Act further authorizing your petitioner, if he shall have good reason to believe that a proper disclosure has not been made and that there is property in the custody of said depository which has escheated or is escheatable to the state, upon leave granted therefor, to file a Bill in Chancery in the name and on behalf of the People of the State of Michigan against said depository in any Court having jurisdiction thereof, to compel a full, complete and truthful statement of the matters in said Acts required to be contained in the report aforesaid.

XI

That said Act provides that after a truthful and complete report has been filed by the depository, the Attorney General or the State Public Administrator, where after

examination of said report and investigation relative to the unclaimed, uncalled-for or abandoned property reported, discloses that the persons legally entitled thereto have been unheard of, missing or disappeared for a period of seven (7) years or more, giving rise to a presumption of death, and leaving no known heirs to institute proceedings to administer the unclaimed, uncalled-for or abandoned property as their estate, in accordance with the provisions of said Act.

[fol. 8] XII

That in the said Act, it is further provided that whenever such estate has been fully and completely administered by the Probate Judge having jurisdiction thereof, that it shall be the duty of your petitioner, as Attorney General, to see to it that all such property remaining in said estate after due administration thereof, is turned over to the care and custody of the State Board of Escheats, who shall take the same as Trustee thereof and who, as soon thereafter as possible, shall cover the said property or avails thereof to the State Treasury for the use of the Primary School Fund of the State of Michigan.

XIII

That in said Act it is further provided that whenever there is money, securities, credits or property of any kind that has remained unclaimed, uncalled for, or abandoned, as in said Act provided, for a period of seven (7) years or more, your petitioner, the Attorney General, may in the name of the People of the State of Michigan, institute suit in the Circuit Court in Chancery of the county in which the depository is situated to escheat to the state such unclaimed, uncalled for or abandoned property, or may intervene for such purpose in any suit. That said Circuit Court in Chancery, after due notice being given to all parties in interest as provided in said Act, shall at said hearing upon a finding that such property has been abandoned, decree such property escheated or transferred to the state and direct that the same be paid over or delivered to the State Board of Escheats, to be held by said board as other escheated property.

[fol. 9] XIV

That in said Act, it further provides that if at any time after real estate or personal property is assigned to the people of this state as an escheated estate, or as abandoned property, any person or persons shall file with the State Board of Escheats satisfactory proof, to be determined by said Board of Escheats, of the right of such person or persons, as husband, wife, heir-at-law, next of kin, devisee or legatee under a will, or assigns, to the estate of such disappeared, missing or deceased person, then in that case the State Board of Escheats shall cause such real estate or personal property, or the avails thereof, whenever the same has been sold by the Board of Escheats, upon the payment to the said Board of Escheats by the person or persons so claiming the estate, of all expenses to the state which may have been incurred by the state in relation to such estate, to be turned over to such person or persons, or such part thereof as such person or persons may be lawfully entitled to out of the estate of such disappeared, missing or deceased person.

At any time after any money, securities, credits or property of any kind is assigned to people of this state as an escheated estate or as abandoned property, any assignee or any depositor, other than a depositor who was a natural person, shall file with the State Board of Escheats satisfactory proof to be determined by said Board of Escheats, of the right of such assignee to the money, securities, credits or property of any kind, or the avails thereof, when the same has been sold, to be turned over to the assignee, or such part thereof as such assignee may be legally entitled to out of such escheated or abandoned property.

The depositor presumed to be deceased, or to have abandoned his property, and whose said estate has been admin-
[fol. 10] istered, or whose property has been decreed to have been abandoned, and assigned to the people of the state as an escheated estate, or as abandoned property, may at any time upon presenting to the Board of Escheats, satisfactory proof of his identity and right to such assigned property, receive the property so assigned to the state, or the avails thereof, and in addition thereto shall be paid the amount of administration costs and expenses which have

been charged against and paid out of his estate. Such payments shall be made out of any money in the state treasury which has been derived from escheated estate or abandoned property.

Any depositor, his heirs, legatees, devisees or assigns may have a final decision of the State Board of Escheats under this section reviewed by the Supreme Court by Certiorari.

XV

That in said Act, it further provides that where money, securities or other personal property is paid over or delivered to an administrator, or to the State Board of Escheats, pursuant to said Act, and any depository, as hereinbefore defined in said Act, paying such money or delivering such securities or property is thereafter required to carry out and perform their contract of deposit with the depositor, as hereinbefore defined in said Act, or the heirs, holders for value or assigns of such depositor making such deposit, or the person in whose name such property was held, possessed or controlled, as provided in said Act, the State of Michigan shall indemnify and pay to such depository the amount of damage or loss which they may have sustained, providing satisfactory proof thereof is made to the State Board of Escheats of the State of Michigan, which State Board of Escheats shall allow the amount they find to be due and certify the same to the Auditor [fol. 11] General, who shall thereupon draw his warrant for such amount on the State Treasurer, who shall pay the same out of any money in the state treasury which has been derived from escheated estates or abandoned property.

Any depository, his or its heirs or assigns, may have any final decision of the State Board of Escheats under this section reviewed by the Supreme Court by Certiorari.

XVI

That by said Act, in addition to the making of the annual report therein referred to, it is made the duty of each person, who or which is a depository, as defined in said Act, within sixty (60) days after receiving such demand in writing from the State Board of Escheats, or the Attorney General, to make, sign, swear to, and file or cause to be made, signed, sworn to and filed, a report in form and substance as

provided for in said Act. In case of liquidating or dissolving depositories, the report shall be based and substance shall include all property as provided for in said Act, where no dealings or transactions have been had between the depositor, as defined in said Act, and the depository with respect to such property for a period of seven (7) years or more.

XVII

That in accordance with the aforesaid Act, as amended, on, to wit, the 20th day of June, A. D. 1946, a demand in writing was made upon the said Joseph T. Connoly, one of the defendants herein, Receiver of the First National Bank—Detroit, a national banking association, a true copy of which is attached hereto, made a part hereof, and marked "Exhibit B", and to which reference is hereby prayed, that he furnish a report of all those items and accounts wherein dividend checks were heretofore issued to and in the name [fol. 12] of those persons who had previously filed proofs of claim with the Receiver of the First National Bank—Detroit and which proofs of claim were duly received, passed upon, adjudicated and approved by the said Receiver of the First National Bank—Detroit and by the Comptroller of the Currency of the United States and which said dividend checks were either unclaimed by, or not delivered to, the persons entitled thereto, or which said checks were delivered to the persons entitled thereto but were not subsequently presented for payment thereof, the funds segregated and set apart for the payment of these latter dividend checks remaining, together with the aforesaid unclaimed or undelivered checks, in the possession or under the control of the said Receiver and the Comptroller of the Currency of the United States of America, and concerning which no dealings or transactions have been had between said Receiver and/or the Comptroller of the Currency of the United States of America and the persons entitled thereto and to whom these checks were issued, their heirs, devisees, legatees or assigns, since the time of issuance thereof or for a period of seven years or more last past.

XVIII

That it was the duty of the said defendant Receiver, and/or his predecessors, to make, execute and file with the State Board of Escheats of the State of Michigan, on the 30th day of June of each year, during the pendency of said

Receivership, pursuant to the statutes hereinbefore set forth, the reports as provided for in said statutes, embracing and including all items wherein proofs of claim had been filed, adjudicated and allowed and wherein, based upon such valid proofs of claim, dividend checks were issued thereon, but which checks had remained unclaimed, undelivered, uncalled-for or abandoned, or which checks had been delivered to the persons entitled thereto but which had not been pre-[fol. 13] sented for payment thereof and wherein no dealings or transactions had been had between said defendant Receiver and/or his predecessors and/or the said defendant Comptroller of the Currency of the United States, and/or his predecessors, and the persons entitled thereto, their heirs, devisees, legatees and assigns, respecting said checks and/or the funds segregated and allocated for the payment thereof, for a period of seven years or more subsequent to the date of the issuance of said dividend checks; that said defendant Receiver and/or his predecessors have wholly and utterly neglected and failed to file with the State Board of Escheats of the State of Michigan the reports so required to be filed by said statutes, to the great detriment and irreparable harm and loss to the owners of said dividends, their heirs, legatees, devisees and assigns and to the people of the State of Michigan, and particularly the Primary School System thereof.

XIX

That your petitioner is informed and verily believes, that the said defendant Receiver, pursuant to direction of said defendant Comptroller of the Currency, is about to remove as of the 30th day of June, A. D. 1946, all said unclaimed, uncalled-for, abandoned and undelivered dividend checks, together with the funds for the payment of those checks which had been delivered but not presented for payment, now in their possession and under their control, from out of this jurisdiction and to the offices of the Comptroller of the Currency, Washington 25, D. C., together with the books, records, files, proofs of claim and all other matters or things appertaining or incident thereto; that such removal, if permitted, would be violative of and contrary to the express terms and provisions of the statutes hereinabove enumerated and set forth, for the reason that such action, if permitted, would place the said property, now

[fol. 14] within this jurisdiction and subject to the statutes hereinabove set forth, beyond and outside of the territorial limits of the State of Michigan and beyond the process and outside the jurisdiction of its courts, all to the great and irreparable harm and injury of the owners of said dividends, and their heirs, legatees, devisees and assigns and to the people of the State of Michigan, and particularly the Primary School System thereof.

XX

That your petitioner is informed and verily believes that the liquidation of the said First National Bank—Detroit, a national banking association, has for some time past been completed and that the dividend checks and funds hereinabove described and set forth, represent a separate and distinct segregation of property belonging to the owners, their heirs, devisees, legatees and assigns thereof, based upon the valid proofs of claim heretofore filed with the said defendant Receiver and/or his predecessors, and contractural rights based thereon and in and to which, the State of Michigan and the people thereof under its Escheat Laws hereinabove described and set forth, have an interest.

XXI

That this petition is filed in accordance with the Provisions of Section 13463, Compiled Laws of the State of Michigan for the year 1929, and Section 274-D of the Judicial Code, Section 400, U. S. C.

XXII

That the matter aforesaid is concerned with an actual controversy between the people of the State of Michigan and the defendants herein, and is not concerned with Federal taxes.

[fol. 15] XXIII

And your petitioner further alleges that he is without relief in the premises except in a Court of Equity.

Wherefore, your petitioner respectfully prays:

1. That this Court take jurisdiction of the aforementioned matter and that the within named defendants and each of

them, be required to make full, true and direct answer to the matters herein stated and charged.

2. That a Writ of Summons be issued out of and under the Seal of this Court to each of the defendants herein named.

3. That in accordance with Section 274-D of the Judicial Code, Section 400 U.S.C., this Honorable Court declare as follows:

a. That Act 238 of the Public Acts of Michigan for the year 1897, and amendments thereof, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, is applicable to the First National Bank—Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated.

b. That the defendants, their successors, attorneys, officers, agents and employees are subject to and bound by the provisions of the foregoing laws.

4. That an Order to Show Cause be issued out of this Honorable Court calling upon the said defendants, their successors, attorneys, officers, agents and employees, to show cause, if any there be, why injunction should not issue in the meantime and during the pendency of the said suit [fol. 16] enjoining said defendants their successors, attorneys, officers, agents and employees from removing or causing to be removed the aforesaid unclaimed, undelivered, uncalled-for or abandoned dividend checks or those funds which were segregated and set apart for the payment of those dividend checks which have heretofore been delivered to the persons entitled thereto but not presented by them for payment thereof, and any and all books, records, files, proofs of claim and allied papers concerning, pertaining or incident thereto, from the jurisdiction of this Court and out of and beyond the territorial limits of the State of Michigan.

5. That a temporary restraining order be allowed by this Honorable Court in the meantime and pending the hearing on the Order to Show Cause, restraining the said defendants, their successors, attorneys, officers, agents and employees, from removing or causing to be removed the aforesaid unclaimed, undelivered, uncalled-for, or abandoned dividend checks or those funds which were segregated and set apart for the payment of those dividend checks

which have heretofore been delivered to the persons entitled thereto but not presented by them for payment thereof, and any and all books, records, files, proofs of claim and allied papers concerning, pertaining or incident thereto, from the jurisdiction of this Court and out of and beyond the territorial limits of the State of Michigan.

6. That your petitioner may have such other and further relief in the premises as to this Court and may seem adequate and just.

And your petitioner will ever pray.

John R. Dethmers.

[fol. 17] *Duly sworn to by John R. Dethmers. Jurat omitted in printing.*

[fol. 18] EXHIBIT "A" TO PETITION

ACT NO. 238, PUBLIC ACTS OF 1897, AND AMENDMENTS THERETO, AS AMENDED BY ACT NO. 170 PUBLIC ACTS OF 1941

Title

An Act to provide for the discovery by the state board of escheats or the attorney general of escheated and escheatable estates, including abandoned property, and providing the procedure to declare such property escheated to the state, and for the disposition thereon, and declaring the statute of limitations not applicable to such proceedings.

13455. Escheated Property: Attorney General to take charge. Sec. 1. The people of the State of Michigan enact, That the Attorney General of this state, shall, as hereinafter provided, take charge of all matters pertaining to lands or other property which may have escheated or which may hereafter escheat to the State by reason of the owners thereof dying intestate and leaving no legal heirs thereto.

13456. Same: Investigation by Attorney General. Sec. 2. It shall be the duty of the Attorney General to make investigations and inquire into every county of this state as to whether there is any property therein belonging to the estate of any deceased person who was, at the time of his death, a resident of any county herein, or who was a non-

resident, but had property in any such county at the time of his death, and who shall have died intestate, leaving no legal heirs, and whose estate under the laws of descent of this state would have become vested in the state; the kind and nature of such property, and the situation and condition thereof.

[fol. 19] 13457. Same: Administration, Procedure: Non-Resident Decedent, Jurisdiction. Sec. 3. Whenever the Attorney General has knowledge of any escheated estate, he shall immediately see that due administration thereof shall be had in the Probate Court of the county of which the deceased person owning such estate was an inhabitant or resident at the time of his death, or, if a non-resident, in a county in which such deceased person had any such estate at the time of his death. If such deceased person, at the time of his death, resided in any other state or country leaving such estate to be administered in this state, administration thereon shall be granted by the Probate Court of any county in which there shall be such estate to be administered, and the administration first legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the Probate Court of every other county.

13458-1. Same: Appointment of Administrator; Attorney General, Duties; Laws Applicable. Sec. 4. Administration of the estate of any such person dying intestate shall be granted upon the application of the Attorney General to one or more suitable persons. It shall be the duty of the Attorney General to see that such administration is promptly and properly carried on, and he shall represent the state and protect its interests in all matters pertaining to such estates. Such administration shall be in accordance with the general statutes governing the administration of estates of deceased persons, except as herein otherwise expressly provided.

13458-2. Same: Limitation of Administrator's Fees. Sec. 4a. In the administration of the estates of disappeared or missing persons to escheat unclaimed, uncalled for or abandoned money, securities, credits or property of any kind [fol. 20] in the Probate Court, the fees allowed by the Probate Court to the county public administrator shall not exceed a total of more than 15 percent of the cash value of the property handled by them.

13458-3. Definitions. Sec. 4b. The words "person" or "persons" as used in this act shall be understood and interpreted to mean and include a natural person, a co-partnership, a company, an association, a bank, a trust company, a corporation, except municipal corporations, or any officer thereof, any governmental department, agency, instrumentality or official, a depository, a receiver, a trustee, a fiduciary, a debtor, a custodian, a liquidating officer, or any combination of natural persons.

The words "depositor" or "depositors" as used in this act shall be understood and interpreted to mean and include any person, or persons, as above defined, who or which is the legal or equitable owner or creditor entitled to the possession of any property, real, personal or mixed, including liquidated choses in action, which is in the possession or under the control of any other person, as above defined, who or which is indebted or accountable for any such property to such depositor.

The word "deposit" as used in this act shall be understood and interpreted to mean and include money, credits, securities, liquidated choses in action and property of any kind or nature.

The word "depository" as used in this act shall be understood and interpreted to mean and include any person, as above defined, who or which has in his or its possession or under its control any property, real, personal or mixed, including liquidated choses in action, for which he or it is indebted or accountable to any other person as depositor. [fol. 21] The word "escheated" as used in this act shall be understood and interpreted to refer to and include all property of whatever nature, the title to which has accrued and vested in the state by operation of any statute of this state, by reason of there being no known heirs, devisees, legatees or assignees of the last known owner.

The word "escheatable" as used in this act shall be understood to refer to and include all property of whatever kind or nature, including liquidated choses in action, over which the state has power to assume control by appropriate proceedings, by reason of its having lain dormant, unclaimed, uncalled for or abandoned as in this act provided.

13459. State Interest, Protection by Attorney General. Sec. 5. It shall be the duty of the Attorney General to pro

tect the interests of the state in any unclaimed, uncalled for or abandoned money, securities, credits or property of any kind, held by or in the possession or control of any person, or persons, in the name of or for the use and benefit of any other person, or persons, in manner provided for in this act.

13460-1. Same: Report to State Board of Escheats; Contents, Signature, Filing, False Statements, Perjury. Sec. 6. On the thirtieth day of June in every year after the taking effect of this act, it shall be the duty of each person within this state, who or which as a depository is indebted or accountable to any other person for money, credits, securities or property of any kind to make a report as hereinafter provided.

Such report shall be made to the State Board of Escheats and shall contain a truthful statement, in detail of the following matters, viz.:

[fol. 22] First, The name of the depositors, or the name of the person in whose name any such deposit, or deposits, of any kind is held by any such person, or depository, where no dealings or transactions have been had between the depositor and the depository with respect to any money, credits, securities or property of any kind for a period of 7 years or more: provided, however, That notice in writing to the depository by the depositor, his heirs, representatives or assigns, to keep the deposit alive, shall be construed as a transaction within the meaning of this subsection;

Second, The date of such depositor deposits, by the depositor with the depository, or credit or credits by the depository to the depositor and whether they are in money, securities, or other property, and if not in money, the nature of the same;

Third, Any interest due on such deposits, money, securities, credits or other property, if any, and the amount thereof;

Fourth, The sum total of such deposit, deposits, money, securities, credits or other property, together with the interest added thereto;

Fifth, Such report, itemized as aforesaid, shall be signed by the natural person making the same and shall be sworn

to before a natural person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained. If such report is made for and on behalf of a copartnership, company or association, such report may be signed and sworn to by any member of such copartnership, company or association or some person duly authorized who has knowledge of the facts. If such report is made for and on behalf of a corporation, private or municipal, such report shall be signed and sworn to by the [fol. 23] president, vice-president, or treasurer of such corporation, and such signing and swearing to such reports shall appear to be for and on behalf of such corporation.

After the making, signing and swearing to such report as herein provided, the same shall be filed in the office of the State Board of Escheats of the state of Michigan and it shall be the duty of the secretary of said Board of Escheats to endorse or cause to be endorsed thereon the time at which such report was received and filed, which endorsement shall be signed by such secretary or some person legally competent to sign the same, and thereafter such reports shall be and remain a part of the official records of the office of the State Board of Escheats.

If any false statement in such report is signed and wilfully sworn to, it shall be deemed perjury on the part of the person signing and swearing to the same, and such person shall be liable to be proceeded against and punished as in other cases or perjury.

13460-2. Same: Additional Reports on Demand of State Board of Escheats, or the Attorney General, Contents, Examination. Sec. 6a. Upon receiving information or having good reason to believe that any money, credits, securities or property of any kind, has been unclaimed, uncalled for, or abandoned, as provided in sections 9a and 13a hereof, the State Board of Escheats or the Attorney General shall make demand in writing for a report, as provided herein from the person acting as a depository, as hereinabove defined, who or which has in his or its possession or control such unclaimed, uncalled for, or abandoned property.

Within 60 days after receiving such demand in writing from the State Board of Escheats, or the Attorney General, [fol. 24] it shall be the duty of each person receiving such a

demand, who or which is a depository as hereinabove defined, to make, sign, swear to and file, or cause to be made, signed, sworn to and filed, a report in form and substance as provided in section 6 of this act. In case of liquidating or dissolving depositories, the report shall be based on the form provided by section 6, and the substance of the report shall include all property as provided in section 9a of this act, where no dealings or transactions have been had between the depositor and the depository with respect to such property for a period of 7 years or more.

The State Board of Escheats shall examine, or cause to be examined, such reports with respect to any escheated or escheatable property and report the same to the Attorney General or the State Public Administrator, who shall take such action as may be necessary to escheat or have decreed abandoned such escheated, escheatable or abandoned property as shown in such report.

In making such examination the State Board of Escheats or the Attorney General shall have all the powers with respect to examination of the books and records of the depositories making such reports as are provided by the banking laws of this state with respect to examination of banks.

13461. Same: Failure to Make Report, Penalty, Collection. Sec. 7. If any depository, as hereinabove defined, shall, after being required so to do by the State Board of Escheats or the Attorney General, as hereinbefore provided, failed to make, sign, swear to and file, or cause to be made, signed, sworn to and filed such a report in manner, form, substance and time as aforesaid, he, they or it shall become liable to and shall forfeit to the people of the State of Michigan the penal sum of $300.00 for each such failure, and an [fol. 25] additional penal sum of $10.00 for each and every day while such report shall remain unfiled as in this act provided.

Such penal sum or sums may be collected as hereinafter provided by an action in assumpsit or any other proper legal action to collect a debt, brought in the name and on behalf of the people of the State of Michigan in any court having legal jurisdiction thereof, and any judgment rendered therefor and costs of suits may be collected in like

manner as other judgments and costs of suit in such cases in such courts are collected.

13462. Same: Collection of Penalty by Attorney General, Procedure, Disposition, Use. Sec. 8. It shall be the duty of the Attorney General to commence any such actions for the collection of such penal sums as hereinbefore provided and to duly prosecute them to effect. After any judgment for such penal sum or sums is rendered, the amount of such judgment with costs of suit may be paid into court by the judgment debtor against whom the same shall be rendered, or if such judgment and costs are collected by execution, the money collected on such judgment and costs shall be paid into court; and in either case the court or clerk thereof receiving the money on such judgment shall immediately transmit the same or cause the same to be transmitted to the state treasurer of the state, who shall give or cause to be given to such court rendering such judgment and transmitting such money his receipt therefor as such treasurer, which receipt such court or clerk thereof shall file or cause to be filed in his office, and the same shall thereafter remain a part of the official records of such office. Such money so received by the state treasurer shall be placed to the credit of the primary school fund.

[fol. 26] 13463-1. Same: Failure to Report, Duty of State Board of Escheats, and the Attorney General; Suit in Chancery to Compel Report. Sec. 9. It shall be the duty of the said board of escheats to see that such reports are properly made in manner and time as hereinbefore provided; and if the same are not filed in time and manner as hereinbefore provided, to take all proper steps to secure the proper making and filing of the same; and it shall be the duty of the attorney general to promptly prosecute to effect and to collect all such penal forfeitures hereinbefore provided for. In the protection of the interests of the state in such deposits or property of any kind as aforesaid, the attorney general shall have power and it is hereby created his duty in addition to the other means hereinbefore provided, if he shall have good reason to believe that a proper disclosure has not been made by any person as depository in any of the reports in this act provided for, and that there are moneys, securities, credits or property of any kind in their custody

or under their control which has escheated or is escheatable to the state, to apply to the circuit court of the proper county by special motion for leave to file a bill in chancery, and upon due showing and leave granted to file a bill in chancery in the name and on behalf of the people of the State of Michigan as depository in any court having jurisdiction of such suit in chancery, or other proper proceedings to compel a full, complete and truthful statement of the matter in this act required to be contained in the reports aforesaid. In any suit or proceedings in this act provided for to be commenced against any such depository no demand for security for costs shall be entertained by the court before whom such suit or proceeding shall be pending.

13463-2. Same: Depositories in Liquidation, Escheatable or Abandoned Property, Collection. Sec. 9a. When any de- [fol. 27] pository, as hereinbefore defined, operating within this state, whose business is being liquidated or dissolved, shall have, be in possession of or in control of, in any way or manner, of any money, securities, credits or property of any kind belonging to any depositor or depositors for which no claim has been filed or for which no demand has been made within the period during which a claim or demand is by law or by decree required to be filed or made by depositors, or when any depository operating within this state, whose business is being liquidated or dissolved, shall have, be in possession or in control, as aforesaid of any money, securities, credits or property of any kind regarding which the depositor thereof has filed no claim and has had no dealings with such depository and/or with the receiver, custodian or liquidating agent thereof, for a period of 7 years from the date of the last deposit or transaction, such money, securities, credits or property of any kind shall be subject to escheat to the people of the State of Michigan, as other escheated, escheatable or abandoned property, and shall, at the discretion of the attorney general or the state public administrator, be administered as in this act provided, or the attorney general may intervene for and on behalf of the people of the State of Michigan in any pending suit or may institute suit to have such property decreed to have escheated and be escheated to the state.

The attorney general shall have the right and be permitted to file 1 or more claims with the receiver, trustee,

custodian or liquidating agent of such depository, which shall be allowed or disallowed the same as if filed by the depositor, and subject to the same set-offs. Such claim or claims filed by the attorney general shall cover and include all deposits for which no claims have been filed by the depositor or depositors, and may be filed at any time before payment of final dividend. Dividends shall be paid to the [fol. 28] state board of escheats on all claims so filed by the attorney general, and allowed.

13463-3. Same: Suit in Chancery by Attorney General; Collection of Escheatable or Abandoned Property, Procedure. Sec. 9b. Where money, securities, credits or property of any kind has been unclaimed, uncalled for, or abandoned, as set forth in section 13a hereof for a period of 7 years or more by the depositor or owner thereof, the attorney general may, in the name of the people of the State of Michigan, institute suit in the circuit court in chancery to escheat to the state such unclaimed, uncalled for, or abandoned property, or may intervene for such purpose in any suit. The circuit court in chancery of the county in which the depository, having the possession or control of such property, is located or has his or its principal office, shall have complete jurisdiction and full power and authority in the premises. Any depository having possession or control of such property and the depositors or owners of such property shall be made parties defendant in such suit. Any number of depositors or owners and any number of depositories may be joined as parties defendant. Personal service shall be made upon such depositories having possession or control of such unclaimed, uncalled for, or abandoned property, and upon such depositors or owners if they or it be found in the county and if not by publication for 6 successive weeks in a newspaper printed and published in the county and circulating therein. Said court at the hearing of said cause shall, upon a finding that such property has been abandoned, decree such property escheated or transferred to the state and direct that the same be paid over to or delivered to the state board of escheats, to be held by said board as other escheated property.

[fol. 29] 13464-1. Same: Person Missing 7 Years, Administrator; Appointment, Right to Property, Disposition.

Sec. 10. If, by any of such reports in this act provided for, it shall appear, or if in any manner it shall come to the knowledge of the attorney general that a depositor has on deposit with a depository any money, securities, credits or property of any kind, or that there has been deposited or left with any such depository any money, securities, credits or property of any kind, in the name of any depositor whose identity is unknown, and that no dealings or transactions have been had in regard to such property between the depositor and the depository within 7 years from the date of the last deposit made by such depositor, or credit (not including voluntary credits) and that there is good reason to believe that such depositor is dead and that his estate should escheat to the State of Michigan; then, and in that case it shall be the duty of the attorney general or the state public administrator to take proceedings forthwith to have an administrator appointed in the proper probate court to administer upon the estate of such missing depositor as a deceased person and it shall be the duty of the state board of escheats to compel the institution of such proceedings. Such administrator shall be appointed as to person and manner of appointment as is provided for in sections 3 and 4 of this act.

After the appointment of such administrator and upon his giving due and sufficient bonds to be required by the court, he shall have the right and it shall be his duty to demand and receive from any such depository having in its possession or under its control any deposits of money, securities, credits or property of any kind of such missing depositor, as provided in this act, and he shall have all the rights of action to reduce such money, credits, securities or property of any kind to his personal possession and control as administrator as aforesaid, as any other administrator [fol. 30] would have if administering upon the estate of a deceased person.

If there are no known heirs, legatees, devisees or assigns of such missing depositor, upon the allowance of his final report and accounting by the probate court such administrator shall assign all property or funds remaining in such estate to the State Board of Escheats.

13464-2. Same: Persons Missing 7 Years; Proof of Escheat, Administration of Estates, Notices. Sec. 10a. In

case there are no known heirs, legatees, devisees or assigns of a depositor, it shall be sufficient proof for the purposes of escheat under the provisions of this act, when it shall appear from reliable sources and from the books and records of the depository with whom the disappeared or missing depositor has money, securities, credits or property of any kind belonging to or standing in the name of any such disappeared or missing depositor, that such disappeared or missing depositor who has had no dealings or transactions with such depository for a continuous period of 7 years in regard to such property: provided, however, That within 30 days after the granting of administration upon the application by the Attorney General or by the State Public Administrator, notice of the granting of such administration shall be published in the form of similar notices in the administration of the estates of deceased persons: provided further, That notice of the hearing on the final account of the administrator shall be published once each week for 3 weeks consecutively prior to the date of the final hearing for the closing of the estate: provided further, That no other or additional notices or proof or publication shall be required for the purposes of escheat in the probate court under the provisions of this act except as herein provided.

[fol. 31] 13464-3. Same: Combination of Escheated Estates for Administration Purposes, Notices. Sec. 10b. For the purposes of escheat in the probate court under sections 9a, 10, 13 and 13a of this act, it shall be lawful for the Attorney General or the State Public Administrator to apply for administration of more than 1 estate in 1 and the same proceeding: provided, however, That the aggregate value of the known assets of the combined estates shall not exceed the sum of $1,000.00: provided further, That the publication requisite in the course of the administration of escheated estates shall also apply hereunder with the exception, however, that estates combined in accordance with the provisions of this section shall all be listed in the same issues of publication and no separate publication shall be required for the individual estates hereunder combined: provided further, That notices of appointment of an administrator of 2 or more combined estates published in the same issues of the paper, where the appointment of the administrator of such 2 or more combined estates was

made on the same day, may list the names of each combined estate under a proper title and proceeding number, with only 1 notice of appointment immediately following the listing of all the names in the combined estates: provided further, That notices of hearing on the final accounts on 2 or more combined estates published in the same issue of the paper, where the hearings are set for the same day, may list the names in each combined estate under a proper title and proceeding number, with only 1 notice of hearing immediately following the listing of all the names in the combined estates: provided further, That a single surety bond sufficient to cover the aggregate value of the combined estates in each proceeding shall be filed by the administrator: provided further, That in all other respects, and whenever advisable and possible estates hereunder com- [fol. 32] bined shall be treated in a similar manner that individual estates are treated under the provisions of this act.

13465. Same: Administration as to Deposits. Sec. 11. After such money and securities as above provided have been legally reduced to the possession and control of such administrator he shall proceed to administer thereon as is herein provided for the administration of escheated estates, and avails of such money or securities shall in like manner be disposed of as herein provided for the disposal of the avails of escheated estates.

13466. Same: Administration of Other Property. Sec. 12. Such administrator shall also administer upon all the other property belonging to such missing person the same as if such missing person were known to be dead. Such administration, and the disposal of the avails of such property shall be in accordance with the provisions of this act in relation to escheated estates.

13467-1. Same: Presumption of Death; Administration of Estate If Without Heirs. Sec. 13. If any person shall disappear and his whereabouts remain unknown for the space of seven (7) years, and no knowledge of such person can be procured for such space of seven (7) years, he shall be presumed to be dead, and if there are no person or persons found who would be his heir or heirs at law, if he were dead, administration shall be taken upon his estate in accordance with the provisions of this act in relation to

escheated estates, and the avails of such estate shall be disposed of as provided in this act for the disposal of the avails of escheated estates.

13467-2. Same: Presumption of Abandonment; Statute of Limitations Not Defense Against State. Sec. 13a. If [fol. 33] any depositor, as hereinbefore defined, who or which has any money, credits, securities or property of any kind which is in the possession or under the control of any depository, doing business, located or operating within this state, where no dealings or transactions have been had with respect to any such property between such depositor and the depository having possession or control of such property for a period of 7 years or more, such depositor shall be presumed to have abandoned such property, and such property shall escheat to this state.

No statute of limitations of this state shall be a defense to any proceedings or action to escheat, have decreed escheated or abandoned any money, credits, securities or property of any kind to the State of Michigan, or any proceeding or action to secure permission of any such property by the state or anyone acting for and on behalf of the state.

13468. Same: Duties of Prosecuting Attorney as to Estate. Sec. 14. The Attorney General shall have the right to call upon the Prosecuting Attorney of any county wherein any such estate is being administered for his services on any occasion in any matter relating to such estate; and such prosecuting attorney shall render such services whenever required by the attorney general without compensation therefor.

13469. Delivery of Property to State Board of Escheats; Notice to Assessing Officer. Sec. 15. Whenever any such estate has been fully and completely administered by the probate court having jurisdiction thereof, the Attorney General shall see that all the property of whatever name or nature remaining in such estate after due administration thereon is turned over to the care and custody of the State [fol. 34] Board of Escheats and to their successors in office, who shall take the same as trustee thereof and who, as soon thereafter as possible, shall cover such property, or the avails thereof, into the State Treasury for the use of the primary school fund. If any such property consists of real estate, the State Board of Escheats shall send by

registered mail a notice containing a description of the real estate so coming into the possession of the state to the assessing officer of the district in which such real estate is situate, and the same shall be sold and conveyed by said trustees in the manner as hereinafter set forth.

13470. Sale of Realty by Board of Escheats; Notices, Publication, Contents. Sec. 16. Whenever such real estate shall come into the care and custody of said trustees as provided for in the preceding section, the same shall be sold and conveyed by said trustees either by public or private sale as the said trustees shall deem to be the best interests of the state therein: Provided, That the same shall not be sold until a notice of the sale of same shall have been published at least three (3) successive weeks prior to said sale in some newspaper printed and circulated in the county in which the real estate is situate. If there be no newspaper printed and circulated in the county where said real estate is situate, then and in that case said notice shall be published in a newspaper printed and circulated nearest to where said real estate is situated. A notice of sale may also be published in such other manner as said trustees may deem to be for the best interests of the state in said real estate. Upon the sale of any such real estate, the Board of Escheats shall notify by registered mail the assessing officer of the district in which such real estate is situate, of such sale, which notice shall contain a description of the real estate sold, the date of the sale, and the name and address of the purchaser thereof.

[fol. 35] 13471. Same: Time; Purchase by State Employe, Penalty. Sec. 17. Such sale when the same shall be sold at a public sale shall be at a time designated by the state board of escheats between the hour of nine (9) o'clock in the morning and five (5) o'clock in the afternoon of the same day to the highest responsible bidder therefor: Provided, That no person employed by the State of Michigan shall by himself or by his agent or representative, either directly or indirectly, purchase any property so sold by the State Board of Escheats. Any sale so made shall be declared void and the purchaser shall be deemed guilty of a misdemeanor and upon conviction before any court of competent jurisdiction shall be fined not to exceed five hundred (500) dollars or imprisoned for a period not to exceed six (6) months.

13472. Same: Terms of Credit, Security. Sec. 18. On such sale, the said trustees may give such length of credit not exceeding three (3) years, and for not more than three-fourths (¾) of the purchase money, as they shall deem best calculated to produce the highest price, and shall secure the moneys for which credit is given by a bond of the purchaser, and by a mortgage on the real estate sold.

13473. Same: Affidavit as to Notice; Deed. Sec. 19. An affidavit of said trustees, or one (1) of them, or of some other person having knowledge of the fact that notice of such sale was given as provided in this act, shall be made before some officer authorized to administer oaths, and shall be attached to the deed of conveyance given by said trustees on the sale of such real estate. Upon such sale, a deed of said real estate shall be made, executed and delivered to the purchaser or purchasers thereof by said trustees.

13474. Sale of Personality by Board of Escheats. Sec. 20. All personal property coming into the care and custody [fol. 36] of said trustees may be sold and conveyed by them, either by public or private sale, as they shall deem to be to the best interests of the state therein.

13475. Record of Board of Escheats; Contents, Place of Keeping. Sec. 21. Said trustees shall keep a full, true and accurate account of all the property of whatever name or nature, which shall come into their care or custody from such escheated estates; the nature of such property and when received; the time and manner of the disposal thereof, the amount of moneys received therefor, and the time and amount of money covered into the State Treasury on account of such estate, which account shall be kept in the office of the state treasurer and shall become a part of the public records of such office.

13476. Escheated Estate; Recovery from State by Person Presumed Dead or His Heirs; Payment. Sec. 22. If at any time after real estate or personal property is assigned to the people of this state as an escheated estate, or as abandoned property, any person or persons shall file with the state board of escheats satisfactory proof, to be determined by said board of escheats, of the right of such person or persons, as husband, wife, heir-at-law, next of kin, devisee or legatee under a will, or assigns, to the estate of such dis-

appeared, missing or deceased person, then in that case the state board of escheats shall cause such real estate or personal property, or the avails thereof, whenever the same has been sold by the board of escheats, upon the payment to the said board of escheats by the person or persons so claiming the estate, of all expenses to the state which may have been incurred by the state in relation to such estate, to be turned over to such person or persons, or such part thereof as such person or persons may be lawfully entitled to out of the estate of such disappeared, missing or deceased person. [fol. 37] At any time after any money, securities, credits or property of any kind is assigned to people of this state as an escheated estate or as abandoned property, any assignee of any depositor, other than a depositor who was a natural person, shall file with the state board of escheats satisfactory proof, to be determined by said board of escheats, of the right of such assignee to the money, securities, credits or property of any kind which has been escheated or decreed to have been abandoned, then in that case, the state board of escheats shall cause such money, securities, credits or property of any kind, or the avails thereof, when the same has been sold to be turned over to the assignee, or such part thereof as such assignee may be legally entitled to out of such escheated or abandoned property.

The depositor presumed to be deceased, or to have abandoned his property, and whose said estate has been administered, or whose property has been decreed to have been abandoned, and assigned to the people of the state as an escheated estate, or as abandoned property, may at any time upon presenting to the board of escheats, satisfactory proof of his identity and right to such assigned property, receive the property so assigned to the state, or the avails thereof, and in addition thereto shall be paid the amount of administration costs and expenses which have been charged against and paid out of his estate. Such payment shall be made out of any money in the state treasury which has been derived from escheated estates or abandoned property.

Any depositor, his heirs, legatees, devisees or assigns may have a final decision of the state board of escheats under this section reviewed by the supreme court by certiorari.

[fol. 38] 13479. Indemnification of Depository: Proof of Loss, Payment. Sec. 23. Where money, securities or other

personal property is paid over or delivered to an administrator, or to the state board of escheats, pursuant to the preceding sections of this act, and any depository, as hereinbefore defined in this act, paying such money or delivering such securities or property is thereafter required to carry out and perform their contract of deposit with the depositor, as hereinbefore defined in this act, or the heirs, holders for value or assigns of such depositor making such deposit, or the person in whose name such property was held, possessed or controlled, as provided in this act, the State of Michigan shall indemnify and pay to such depository the amount of damage or loss which they may have sustained, providing satisfactory proof thereof is made to the state board of escheats of the State of Michigan, which state board of escheats shall allow the amount they find to be due and certify the same to the auditor general, who shall thereupon draw his warrant for such amount on the state treasurer, who shall pay the same out of any money in the state treasury which has been derived from escheated estates or abandoned property.

Any depository, his or its heirs or assigns, may have any final decision of the state board of escheats under this section reviewed by the supreme court by certiorari.

Severing Clause. Sec. 24. Should any portion or section of this act be held invalid for any reason, such holding shall not be construed as affecting the validity of any remaining portion of such section or of this act, it being the legislative intent that this act shall stand notwithstanding the invalidity of any such portion or section.

[fol. 39] EXHIBIT "B" TO PETITION

MICHIGAN STATE BOARD OF ESCHEATS, LANSING

June 20, 1946.

Mr. Joseph T. Connolly, Receiver,
First National Bank—Detroit,
Detroit 31, Michigan.

Dear Mr. Connolly:

Enclosed find Demand Report of Abandoned or Unclaimed Property with reference to Section 6a of Act 238, Public Acts of 1897, as amended and particularly Act 170, Public Acts of 1941.

The demand for report is to be so worded as to include all those items and accounts wherein dividend checks were heretofore issued to and in the name of those persons who had previously filed proofs of claim with the Receiver of the First National Bank-Detroit and which proofs of claim were duly received, passed upon, adjudicated and approved by the said Receiver of the First National Bank-Detroit and by the Comptroller of the Currency of the United States and which said dividend checks were either unclaimed by, or not delivered to, the persons entitled thereto, or which said checks were delivered to the persons entitled thereto but were not subsequently presented for payment thereof, the funds segregated and set apart for the payment of these latter dividend checks remaining, together with the aforesaid unclaimed or undelivered checks, in the possession or under the control of the said Receiver and the Comptroller of the Currency of the United States of America, and concerning which no dealings or transactions have been had between said Receiver and/or the Comptroller of the [fol. 40] Currency of the United States of America and the persons entitled thereto and to whom these checks were issued, their heirs, devisees, legatees or assigns, since the time of issuance thereof or for a period of seven years last past.

The demand report must be prepared in duplicate, signed and sworn to on the reverse side.

Very truly yours, Michigan State Board of Escheats
(Signed) John Gafner, Assistant Secretary.

JG:mf. Registered Mail. Return Receipt Requested. Encl's.

[fol. 41] Annual Report of Unclaimed or Abandoned Property

Name

Address

City ,

To State Board of Escheats, Lansing, Michigan:

The following schedule contains a full, true and complete statement and report of all abandoned or unclaimed property (other than demand bank deposit balances) now in the possession or under the control of the undersigned, or for which the undersigned is accountable to another under special contract or agreement with the owner, and concerning which property or account there has been no dealing or activity on the part of such owner or depositor for a period of seven years or more next preceding the date of this report. This report is made and filed pursuant to the provisions of Act No. 238, P. A. of Michigan for the year 1897, as amended.

Report as of the close of business on , 194 .

SCHEDULE B (for use by persons, co-partnerships, associations and corporations, including banks, in reporting abandoned or unclaimed property other than demand bank deposits.)

Item No.	Name and Last Known Address of Owner or Depositor	Description of Property	Date of Last Activity	Estimated Value

(Signature)

By

(Official Title)

Dated , 194

[fol. 42] STATE OF MICHIGAN
County of —— ss:

——, being duly sworn, says that he is ——, (Official Title) of ——, (Name of Depository) a —— corporation, named in the foregoing report, that such report is true of his own knowledge, and that he signed the same for and in behalf of said depository, he being duly authorized so to do.

Subscribed and sworn to before me this — day of —— A.D. 194—.
——, Notary Public, —County, Michigan.

My commission expires —— —, ——.

EXPLANATION:

"Abandoned property" means property of whatsoever kind or description, tangible or intangible, in the possession or under the control of the party reporting, or for which he or it is indebted or accountable, and for which the owner has made no claim or demand, or concerning which there has been no dealing or transaction on the part of the owner, for a period of seven years or more next preceding the date of the report. Such property includes money, securities, credits, bills of exchange, deposited contents of a safe-deposit box or other receptacle for safe keeping, unclaimed either before or after removal therefrom, accounts for unclaimed wages or salaries or other compensation, and all other choses-in-action, debt or obligation, howsoever evidenced.

"Last Activity" means the date of the last activity or transaction by a depositor or owner in relation to the item of account reported.

If any item in this report has been previously reported, please so indicate.

Mail report to: State Board of Escheats, Lansing 3, Michigan.

File No. —

—— —— (Name), —— —— County, —— —— State. P. O. Address: —— ——.

Annual Report

Year 19— Amount $——

Office of State Board of Escheats Received and Filed

194

Referred to State Public Administrator

194

[fol. 43] In United States District Court

Order to Show Cause and Temporary Restraining Order — Filed June 25, 1946

At a session of the said Court held at the Federal Building, in the City of Detroit, County of Wayne, Michigan, on this 25th day of June, A. D., 1946.

Present: Honorable Arthur F. Lederle, District Judge.

Upon reading and filing of the Petition for Declaratory Judgment and Other Relief herein, and

On Motion of John R. Dethmers, Attorney General of the State of Michigan, Archie C. Fraser, State Public Administrator and Assistant Attorney General and Percival R. Piper, Assistant Attorney General, Attorneys for the Plaintiff herein,

It is ordered, that the defendants herein, Preston Delano, Comptroller of the Currency of the United States of America, and Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as the Detroit Representative of the Comptroller of the Currency of the United States of America, appear before this Court on the 8th day of July, A. D., 1946, and show cause why an Injunction should not issue enjoining them, their successors, attorneys, agents, servants, officers and employees, from removing or causing to be removed from the jurisdiction of this court and out of and beyond the territorial limits of the State of Michigan, any unclaimed, undelivered, uncalled-for or abandoned dividend checks, [fol. 44] now in their possession or under their control, which said dividend checks have heretofore been issued upon proofs of claim heretofore filed with the said defendants, and/or their predecessors, by former creditors, depositors and claimants of the First National Bank-Detroit, a National Banking Association, and accepted, adjudicated and allowed by said defendants, and/or their predecessors, together with any or all funds now in their possession or under their control, which were segregated and allocated for the payment of such dividend checks, said dividend checks and funds representing dividends heretofore declared by said defendants and/or their predecessors, together with any and all books, records, files, proofs of

claim and allied papers concerning, pertaining or incident thereto, pending hearing and final disposition of the interest and rights of the State of Michigan in and to said unclaimed, uncalled-for or abandoned dividend checks or funds.

It is further ordered, that pending hearing and disposion of the Order To Show Cause, the said defendants, their successors, attorneys, agents, servants, officers and employees be, and they are hereby restrained from removing or causing to be removed from the jurisdiction of this court and out of and beyond the territorial limits of the State of Michigan, any unclaimed, undelivered, uncalled-for or abandoned dividend checks, now in their possession or under their control, which said dividend checks have heretofore been issued upon proofs of claim heretofore filed with the said defendants, and/or their predecessors, by former creditors, depositors and claimants of the First National Bank-Detroit, a National Banking Association, and accepted, adjudicated and allowed by said defendants, and/or their predecessors, together with any or all funds now in their possession or under their control, which were segregated and allocated for the payment of such dividend [fol. 45] checks, said dividend checks and funds representing dividends heretofore declared by said defendants and/or their predecessors, together with any and all books, records, files, proofs of claim and allied papers concerning, pertaining or incident thereto.

It is further ordered, that nothing herein shall be construed as preventing or precluding the said defendants or their successors, agents, servants, officers and employees from delivering any unclaimed, uncalled-for or abandoned dividend checks now in their possession or under their control to any person entitled to the same upon receipt of satisfactory proof of right thereto, pending hearing and final disposition of Order to Show Cause, nor shall it prevent or preclude the said defendants or their successors, agents, servants, officers and employees from honoring and cashing any dividend checks heretofore or hereafter delivered to any person entitled thereto, pending hearing and final disposition of this Order to Show Cause.

Arthur F. Lederle, District Judge.

[fol. 46] IN UNITED STATES DISTRICT COURT

APPEARANCE OF DEFENDANT, JOSEPH T. CONNOLLY—Filed June 28, 1946

To the Clerk of the Court:

Please enter the appearance of Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, defendant in the above entitled cause, by Robert S. Marx, Lawrence I. Levi and Orville J. Thill, as his attorneys.

Robert S. Marx, Lawrence I. Levi and Orville J. Thill, by Lawrence I. Levi, Attorneys for Joseph T. Connolly, Defendant.

[fol. 47] To John R. Dethmers, Attorney General, Archie C. Fraser, Assistant Attorney General and State Public Administrator, Attorney for Plaintiff, Capitol Building, 102 South Walnut Street, Lansing (2), Michigan. Percival R. Piper, Assistant Attorney General, Attorney for Plaintiff, Cadillac Square Building, Detroit (26), Michigan.

You will please take notice that we have this day caused the appearance of defendant, Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, to be entered in the above entitled cause by Robert S. Marx, Lawrence I. Levi and Orville J. Thill, as his attorneys.

Robert S. Marx, Lawrence I. Levi and Orville J. Thill, by Lawrence I. Levi, Attorneys for Defendant, Joseph T. Connolly, 2443 National Bank Building, Detroit 26, Michigan. Cherry-6075.

Dated: June 28, 1946.

[fol. 48] IN UNITED STATES DISTRICT COURT

STIPULATION RE ORDER TO SHOW CAUSE ETC.—Filed June 28, 1946

It is hereby stipulated, on this 26th day of June, A. D., 1946, at Lansing, Michigan, by and between plaintiff, John R. Dethmers, Attorney General, in the name and on behalf of the people of the State of Michigan, and one of the defendants, Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit representative of the Comptroller of the Currency of the United States of America, by and through their respective counsel, as follows:

That whereas, the Receivership of the First National Bank-Detroit, a National Banking Association, has been terminated and its offices and all books, records, files and appurtenances incident and relating thereto are about to be removed from Detroit, Michigan, to Washington, D. C., and the subject matter of the within cause is included and co-mingled therein, and to attempt to separate and segregate the latter from all of the said books, records and files would unduly delay and interfere with such orderly removal of said offices and work a hardship upon said Receiver, his agents, servants and employees, therefore,

I

It is agreed that the defendant Connolly may proceed with the closing of his offices in Detroit, Michigan as Receiver of the First National Bank-Detroit, a National Banking Association, and his offices as Detroit representative of the Comptroller of the Currency of the United States of America and that he may likewise proceed with the shipping of all of the records now in his possession in Detroit as such Receiver and such Detroit representative, to the [fol. 49] United States Treasury Department in Washington, D. C., there to be delivered to the custodian of the National Archives of the United States where such records will be preserved and maintained.

II

It is further understood and agreed that the defendant or his successor in office will, pursuant to the order of this court, return to this jurisdiction, during the pendency of the within cause, any or all of the records so removed from this jurisdiction as are requested in said court order and it is further agreed that the defendant will raise no jurisdictional issue or controversy in the within cause because of the fact that said records above referred to are not within this jurisdiction.

III

It is further understood and agreed that there are presently six commercial deposit accounts maintained in the National Bank of Detroit, Detroit, Michigan, which are known as "Comptroller of the Currency for the benefit of the creditors of the First National Bank-Detroit, dividend account numbers 1, 2, 3, 4, 5 and 6." It is further agreed that none of the funds in any of said six accounts will be withdrawn by the Comptroller of the Curreney, or the defendant Connolly or his sucessor in office, pending the final determination or disposition of the within cause, except as described in the immediately following paragraphs.

IV

It is further understood and agreed that during the pendency of this litigation the National Bank of Detroit may honor all issued and outstanding dividend checks [fol. 50] drawn on any of the above described deposit accounts, when properly presented for payment to it, and that further, during the pendency of this litigation, the Comptroller of the Currency may draw on said deposit accounts, or may deliver dividend checks drawn on said accounts, to such persons as may present themselves with satisfactory proof of their being entitled thereto.

V

It is further understood and agreed that upon the filing of this stipulation in the within court and cause, an order may be presented to this court providing for the dissolution of the temporary restraining order heretofore issued

herein on June 25, 1946 and further dismissing the Order to Show Cause issued by said court on the same day.

VI

It is further understood and agreed that this stipulation shall not affect the status quo of, and is without prejudice to, the rights of either party hereto.

John R. Dethmers, Attorney General, by Archie C. Fraser, Assistant Attorney General, State Public Administrator for the Plaintiff. Robert S. Marx, Lawrence I. Levi and Orville J. Thill, Attorneys for Defendant Connolly, by Lawrence I. Levi.

[fol. 51] In United States District Court

Order Dissolving Restraining Order and Dismissing Order to Show Cause—Filed June 28, 1946

At a session of said Court held in the Federal Building, in the City of Detroit, State of Michigan, on this 28th day of June, A.D., 1946.

Present: Honorable Arthur F. Lederle, District Judge.

This matter coming on to be heard upon a written stipulation this day filed with this Court and entered into by and between the plaintiff herein and the defendant, Joseph T. Connolly, which stipulation is incorporated herein by reference, and the Court being fully advised in the premises;

It is hereby Ordered that the defendant, Joseph T. Connolly, may forthwith proceed with the closing of his offices in Detroit, Michigan, as Receiver of the First National Bank-Detroit, a National Banking Association, and his offices as Detroit Representative of the Comptroller of the Currency of the United States; and

It is further Ordered that he may likewise proceed with the shipping of all of the records now in his possession in Detroit as such Receiver and as such Detroit Representative, to the United States Treasury Department in Washington, D. C., some of which records are to be delivered to the custodian of the National Archives of the United States. It is specifically understood that included among such books

and records are the proofs of claims, unclaimed dividend checks, signature cards, and similar data which form the [fol. 52] subject matter of the within controversy.

It is further Ordered that said books and records above referred to, including said proofs of claims, dividend checks, signature cards, etc., shall, during the pendency of the within litigation, be subject to being returned to this jurisdiction by the defendant Connolly, or his successor in office, for the purposes of the within cause pursuant to the further order of this Court.

It is further Ordered that the temporary restraining order heretofore issued herein on June 25, 1946, be and the same is hereby dissolved; and

It is further Ordered that the order to show cause issued by this Court on the same day and returnable on the 8th day of July 1946, be and the same is hereby dismissed, without costs to either party.

Arthur F. Lederle, District Judge.

[fol. 53] In United States District Court

Summons—Filed July 2, 1946

To the above named Defendant:

You are hereby summoned and required to serve upon John R. Dethmers plaintiff's attorney, whose address Capitol Bldg., Lansing 2, Michigan an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

George M. Read, Clerk of the Court. By John J. Ginther, Deputy Clerk. [Seal of Court].

Date: June 25, 1946.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 54] No.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

JOHN R. DETHMERS, Attorney General, in the name and on behalf of the People of the State of Michigan, Plaintiff

v.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, A Nat'l Banking Assn, etc., Defendants

SUMMONS IN CIVIL ACTION

Returnable not later than 20 days after service.

John R. Dethmers, Attorney General, State of Michigan; Archie C. Fraser, State Public Adm. & Assistant Attorney General; Percival R. Piper, Assistant Attorney General, Attorney for Plaintiff.

[fol. 55] RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the — day of —— 19—, I received the within summons:

Marshal's Fees: Travel $——, Service ——, total ——. —— —— United States Marshal. By —— ——, Deputy United States Marshal.

Subscribed and sworn to before me, a —— —— this — day of ——, 19—. [Seal].

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[fol. 56] RETURN ON SERVICE

File No. 5824

UNITED STATES OF AMERICA,

Eastern District of Michigan, ss:

I hereby certify and return that on the 25th day of June, 1946, I served the annexed summons and Order to Show Cause and the complaint filed in this cause on Joseph T. Connolly, Receiver First National Bank-Detroit by handing to and leaving a copy of the summons and copy of said complaint with him personally at Detroit, Mich. in said District.

John J. Bare, U. S. Marshal, By: Sam O'Connell, Deputy.

Form 1—To be used for Personal Service.

[fol. 57] RETURN ON SERVICE

File No. 5824.

UNITED STATES OF AMERICA,

Eastern District of Michigan, ss:

I hereby certify and return that on the 25th day of June, 1946, I served the annexed summons and Order to Show Cause and the complaint filed in this cause on Preston Delano, Comptroller of the Currency of the United States of America by mailing a copy of the summons and copy of said complaint with Comptroller of Currency, Washington, D. C. by registered mail, in said district.

John J. Bare, U. S. Marshal, by: Sam O'Connell, Deputy.

Form 1—To be used for Personal Service.

[fol. 58] IN UNITED STATES DISTRICT COURT

STIPULATION FOR EXTENSION OF TIME OF CONNOLLY, RECEIVER, TO PLEAD—Filed July 12, 1946

It is stipulated and agreed by and between the plaintiff and defendant Joseph T. Connolly, as Receiver of the First National Bank Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency

of the United States of America, by their respective counsel, that the time within which said defendant Joseph T. Connolly, as Receiver of the First National Bank Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, may plead, by motion, answer, or otherwise, to the petition for declaratory judgment, filed herein, may be extended to and including the 31st day of July, 1946.

John R. Dethmers, Attorney General, by Archie C. Fraser, Assistant Attorney General, State Public Administrator, for the Plaintiff; Robert S. Marx, Lawrence I. Levi and Orville J. Thill, by Lawrence I. Levi, Attorneys for Defendant, Joseph T. Connolly, 2443 National Bank Building, Detroit 26, Michigan, Cherry—6075.

Dated this 11th day of July, 1946.

[fol. 59] IN UNITED STATES DISTRICT COURT

ORDER FOR EXTENSION OF TIME OF CONNOLLY, RECEIVER, TO PLEAD—Filed July 12, 1946

At a session of said Court held in the Federal Building, in the City of Detroit, State of Michigan, on this 12th day of July, A. D., 1946.

Present: Honorable Arthur F. Lederle, District Judge.

On reading and filing the stipulation by and between plaintiff and defendant Joseph T. Connolly, as Receiver of the First National Bank Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, by their respective counsel, for an extension of time within which said defendant Joseph T. Connolly, as Receiver of the First National Bank Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, may plead to the petition for declaratory judgment filed herein, and the Court being advised in the premises,

It is hereby ordered that the time within which defendant Joseph T. Connolly, as Receiver of the First National Bank Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United

States of America, may plead, by motion, answer, or otherwise, to the petition for declaratory judgment filed herein, may be, and the same hereby is, extended to and including the 31st day of July, 1946.

Arthur F. Lederle, District Judge.

[fol. 60] In United States District Court

Stipulation for Extension of Time of Connolly, Receiver, to Plead—Filed July 29, 1946

It is stipulated and agreed by and between the plaintiff and defendant Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, by their respective counsel, that the time within which said defendant Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, may plead, by motion, answer, or otherwise, to the petition for declaratory judgment, filed herein, may be further extended to and including the 15th day of August, 1946.

Dated at Detroit, Michigan, this 23rd day of July, 1946.

John R. Dethmers, Attorney General, by Archie C. Fraser, Assistant Attorney General, State Public Administrator, For the Plaintiff; Robert S. Marx, Lawrence I. Levi and Orville J. Thill, by Orville J. Thill, Attorneys for Defendant, Joseph T. Connolly, 2443 National Bank Building, Detroit 26, Michigan, Cherry—6075.

[fol. 61] IN UNITED STATES DISTRICT COURT

ORDER FOR EXTENTION OF TIME OF CONNOLLY, RECEIVER, TO PLEAD—Filed July 29, 1946

At a session of said Court held in the Federal Building, in the City of Detroit, State of Michigan, on this 29th day of July, A. D., 1946.

Present: Honorable Arthur F. Lederle, District Judge.

On reading and filing the stipulation by and between plaintiff and defendant Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, by their respective counsel, for an extension of time within which said defendant Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, may plead to the petition for declaratory judgment filed herein, and the Court being advised in the premises,

It is hereby ordered that the time within which defendant Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, may plead, by motion, answer, or otherwise, to the petition for declaratory judgment filed herein, may be, and the same hereby is, further extended to and including the 15th day of August, 1946.

Arthur F. Lederle, District Judge.

[fol. 62] IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE OF PRESTON DELANO, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES OF AMERICA, AND MOTION TO QUASH SERVICE OF PROCESS AND TO DISMISS ACTION—Filed August 13, 1946

Preston Delano, Comptroller of the Currency of the United States of America, claiming that this Court has acquired no jurisdiction over his person as a defendant in this action, hereby appears specially by his attorneys for the

purpose of objecting to the exercise of any such jurisdiction herein by this Court, and appears for no other purpose whatsoever;

Wherefore, so specially appearing, said Preston Delano, Comptroller of the Currency of the United States of America, by his attorneys, moves to quash the alleged service of the summons and copy of the complaint attempted to be made upon him in this action, and for a dismissal as to him of this above entitled action for want of jurisdiction of this Court, for the following reasons, to wit:

1. That, as Comptroller of the Currency, said Preston Delano is an inhabitant and resident of and has his offices in the District of Columbia, all outside the Eastern District of Michigan.

2. That, without his consent, this said action cannot properly be instituted or maintained against the said Preston Delano, as Comptroller of the Currency, outside said District of Columbia; and that any attempt of plaintiff to institute or maintain this said action in this Court against said Preston Delano, Comptroller of the Currency, is contrary to the provisions of the Statutes of the United States [fol. 63] in such cases made and provided, particularly Section 51 of the Judicial Code of the United States (28 U.S.C.A., Sec. 112), and is entirely without authority of law.

3. That no service of process has been made in this action upon said Preston Delano, Comptroller of the Currency, within the Eastern District of Michigan.

4. Further, that the manner in which the alleged service of process herein has been attempted to be made on said Preston Delano, Comptroller of the Currency, is not in conformity with the Court Rules and Statutes of the United States and, in particular, Rule 4 of the Federal Rules of Civil Procedure, and is entirely without authority of law.

This motion is based on the files and records in this action.

Robert S. Marx, Lawrence I. Levi and Frank M. Wiseman, by Frank M. Wiseman, Appearing specially as attorneys for Preston Delano, Comptroller of the Currency, for the purpose of the above Motion only, 2443 National Bank Building, Detroit 26, Michigan, Cherry 6075.

Dated: August 13, 1946.

[fol. 64] IN UNITED STATES DISTRICT COURT

MOTION ON BEHALF OF THE DEFENDANT, JOSEPH T. CONNOLLY TO DISMISS THE PLAINTIFF'S PETITION — Filed August 13, 1946

Now comes Joseph T. Connolly as Receiver of the First National Bank-Detroit, a national banking association, and as Detroit representative, Comptroller of the Currency of the United States, one of the defendants herein, by his attorney, and moves to dismiss the plaintiff's petition for the following reasons:

1. Because the plaintiff's petition reveals that this Honorable Court lacks jurisdiction over the subject-matter of the within controversy.

2. Because the petition reveals that the plaintiff has failed to state a cause of action against this moving defendant.

3. Because the plaintiff's petition reveals that prior to the filing of the within suit this moving defendant and his predecessor receivers in office had completed the liquidation of all of the assets of the receivership of the First National Bank-Detroit and had paid over all moneys so made to the Comptroller of the Currency of the United States in compliance with the provisions of the National Banking Act and particularly Section 192, Title 12, U.S.C.

4. Because under the provisions of the National Banking Act and particularly Sections 192, 193 and 194, Title 12, U.S.C., this moving defendant has no control over funds so turned over to the Comptroller of the Currency of the United States under the provisions of said National Banking Act and has no power or authority with respect to the distribution of said moneys so turned over to the Comptroller of the Currency, the issuance of dividend checks [fol. 65] drawn against said funds or the making and filing of any reports with respect thereto as demanded by the plaintiff herein, all of which is specifically delegated to the Comptroller of the Currency by the National Banking Act as aforesaid.

5. Because this moving defendant, although named in the within suit as both receiver of the First National Bank-Detroit and as the Detroit representative of the Comptroller of the Currency, is not a validly or properly ap-

pointed or authorized agent or representative of the Comptroller of the Currency, the only duly authorized agents for the Comptroller of the Currency being the Deputy Comptroller, the Assistant Deputy Comptroller, and the Third Deputy Comptroller of the Currency as provided for in the National Banking Act, particularly Sections 4, 5 and 6, of Title 12, U.S.C., all three of which are located in the Bureau of the Comptroller of the Currency of the United States in Washington, D. C.

Wherefore, this moving defendant prays that this Court dismiss the plaintiff's petition insofar as this defendant is concerned.

Joseph T. Connolly, as Receiver of the First National Bank-Detroit and as Detroit Representative of the Comptroller of the Currency of the United States, by Robert S. Marx, Orville J. Thill, Lawrence I. Levi and Frank M. Wiseman, by Lawrence I. Levi, 2443 National Bank Building, Detroit 26, Michigan, His Attorneys.

[fol. 66] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF R. B. McCANDLESS IN SUPPORT OF MOTION TO DISMISS—Filed September 3, 1946

DISTRICT OF COLUMBIA, ss:

R. B. McCandless, being duly cautioned and sworn, deposes and says:

That he is the present duly qualified, appointed and acting Deputy Comptroller of the Currency of the United States, and that he has been such since July 7, 1941; that as such Deputy Comptroller of the Currency of the United States he is in direct charge of the Division of Insolvent National Banks and Insolvent National Bank Receiverships, including that of the First National Bank-Detroit.

That the First National Bank-Detroit suspended operations on February 11, 1933, and never thereafter reopened for the conduct of normal banking business. A Conservator was placed in charge of the Bank on March 13, 1933, and on May 11, 1933, the Comptroller of the Currency having been satisfied that the Bank could not be reopened appointed a Receiver therefor, and took possession of the

books and assets of the Bank pursuant to the provisions of the National Banking Act.

A total of 544,630 claims were proven, aggregating $333,173,379.40. The number of claimants was later reduced to 160,271 by the acquisition of a large group of small claims by a comparatively small group of large depositors.

Prior to the appointment of the Conservator, one distribution of five per cent (5%) was made available to creditors and depositors of the Bank by the directors of the Bank [fol. 67] during the State Banking Holiday. A second distribution of five per cent (5%) was made by the Conservator prior to the appointment of the Receiver. Both distributions were in the nature of releases of impounded balances and specific checks were not issued and delivered to creditors or depositors.

At this point and on or about April 12, 1933, the funds accumulating in the hands of the Conservator, which were kept in an account in the Detroit Branch of the Federal Reserve Bank, were augmented by a loan from the Reconstruction Finance Corporation, and a third general release to creditors was authorized of thirty per cent (30%) of balances on deposit.

The Comptroller recognized the emergency confronting the citizens of the City of Detroit. There was neither time nor clerical force to permit the usual process of proofs of claim, the registering of these claims, and the preparation and delivery of dividend checks. Consequently on this occasion, the Comptroller permitted the issuance of Conservator's checks for the thirty per cent (30%) release.

Not until after the Receiver was appointed for the Bank on May 11, 1933, did the process of proving claims begin, and in that process the ratability of the three previous releases was established or adjusted.

The very large number of claims and the immense clerical task presented a problem far beyond the facilities of the Comptroller's office space and clerical force. The emergency in Detroit demanded that special measures be contrived to expedite payments to the public.

The Comptroller of the Currency thereupon in this special instance delegated to the Receiver of the Bank, the power [fol. 68] to effect authorized dividend distributions. Funds were transferred by the Comptroller of the Currency to special dividend accounts subject to the check, for dividend purposes only, of the Receiver. The dividends, paid by

prior release, or effected in that manner by Receiver's checks, were as follows:

1st Div.	5%	February 16, 1933
	5%	March 20, 1933
	30%	April 12, 1933
2nd Div.	10%	November 15, 1933
3rd Div.	20%	November 30, 1934
4th Div.	10%	May 16, 1938
	80%	

After the above distributions were made, it was determined by the Comptroller of the Currency that the problem had been reduced to such proportions as would then permit his regular dividend procedure to be followed. The change in method was made effective at the time of the payment of the fifth dividend on November 1, 1940, which was for the remaining twenty per cent (20%) of the principal balances on deposit. Consequently, all checks for the fifth dividend were drawn by the Comptroller of the Currency.

On May 29, 1944, all the bank accounts that had been maintained subject to the check of the Receiver were closed, and all outstanding Receiver's checks covering the first four dividends were cancelled. The balances so closed out covered the aggregate of the checks still in the hands of the Receiver and undelivered; and, in addition, the total of the checks previously delivered by the Receiver but not presented at the bank for the payment thereof.

[fol. 69] Provision for each class was made as follows:

Payment was stopped on all checks delivered but unpresented and an equivalent sum of money was transferred to the Comptroller in Washington, who placed it in his Washington depositary bank under a pledge of collateral. Thereafter when checks are presented to the former Detroit depositary, they are forwarded to the Comptroller of the Currency for collection, and his new check, bearing his signature, drawn upon his Washington bank, payable to the original claimant, or his assignee, is forwarded in payment thereof.

All undelivered checks in the possession of the Receiver were voided. The aggregate amount of these voided checks

was transferred from the accounts maintained for the Receiver to new accounts which were opened in the National Bank of Detroit in the name of "Comptroller of the Currency, for the benefit of the Creditors of the First National Bank-Detroit, First Dividend", with similar accounts for the "Second Dividend", "Third Dividend", and "Fourth Dividend", the initial deposit in each such account being the aggregate of voided checks of the respective dividends. New checks were prepared payable to the original claimant, executed by the Comptroller of the Currency, drawn against these new accounts, and were entrusted to the Receiver for delivery as called for by creditors.

As stated above, the fifth dividend of twenty per cent (20%) was paid November 1, 1940. This dividend was paid by checks bearing the signature of the Comptroller, drawn against an account in the National Bank of Detroit entitled "Comptroller of the Currency, for the benefit of the Creditors of the First National Bank-Detroit." As it was impractical to attempt to review and sign the checks in the Comptroller's Washington office, the Comptroller dispatched [fol. 70] to Detroit a small group, who supervised the preparation of the dividend, reviewed the computation, and affixed the Comptroller's signature to the dividend checks. When thus completed they were handed over to the Receiver, as customary, for delivery to creditors against their receipt. At the termination of the receivership the undelivered checks in this distribution were returned to the Comptroller for such further effort to complete delivery as his organization could make.

The remaining assets of the receivership were sold under order of court dated September 16, 1942, and the proceeds were used to pay a sixth (or interest) dividend of 7.565%. The number of creditors entitled to receive the dividend had been still further reduced by sale and assignment of claims to the First Liquidating Corporation. These sixth dividend checks were audited and completed by the Comptroller's signature, by a similar process, a group of employees being sent out from Washington to represent the Comptroller and act for him. The checks were drawn against an identical account set up in the National Bank of Detroit in the name of the Comptroller, for the benefit of creditors, etc., Sixth (interest) Dividend.

The Receiver continued in charge of the receivership from the effective date of the sixth and final dividend until June

15, 1944. During that time a continuous effort to deliver all dividend checks was made. It eventually was determined to close the receivership. This was done June 15, 1944, and the final accounting of Receiver B. C. Schram was received and approved, and the receivership was deemed technically closed.

The closing of a receivership involves the reception in the Washington office of certain records and incomplete work. The original executed vouchers, representing all ex- [fol. 71] penses of administering the receiverships, are forwarded to the Comptroller, as are all proofs of claim, receiver's certificates, paid and cancelled dividend checks and the receipts given for the same, and many other records. The very large volume of these records was beyond any storage capacity at the command of the Comptroller. It was decided that these (and other) records should be delivered to the Comptroller in Detroit, to be processed there by one of his employees, and prepared for final deposit in the National Archives.

At the termination of every receivership there are numerous dividend checks which are uncalled for by the creditors. These are invariably forwarded to the Washington office of the Comptroller, who has a small group of employees engaged in further efforts to effect delivery. At the termination of this receivership the volume of such undelivered checks was so large as to be beyond the capacity of the clerical group in Washington and it was determined to effect delivery of these checks to the Comptroller in Detroit. The purpose was to accomplish as much as possible toward full delivery in Detroit, thus reducing the load of detail and correspondence in the Washington office.

For this purpose the Comptroller designated one of his employees, Mr. Joseph T. Connolly, to accept delivery of books and records and of dividend checks from Receiver Schram on the final termination of the receivership, and to act as Custodian of the same until they could be permanently lodged in the National Archives. Mr. Connolly functioned in this manner until June 30, 1946, when the records and the checks still undelivered were shipped to Washington to be lodged in the National Archives, or in the office of the Comptroller of the Currency, and his office in Detroit was closed.

[fol. 72] Upon the resignation of Receiver Schram, Mr. Joseph T. Connolly was given a commission as Receiver, to

act in such incidental cases that might require action by a Receiver. His duties as to the books and records, and as to the undelivered dividend checks were performed in his capacity as employee of the Comptroller, acting under his direction, and not as Receiver.

At the service of the petition in this case, the Comptroller was maintaining six accounts in the National Bank of Detroit, entitled in the Comptroller, for the benefit of creditors, and distinguished as 1st, 2nd, 3rd, 4th, 5th and 6th (final) dividends, in a sum equal to the aggregate amount of undelivered dividend checks in the hands of the Comptroller, plus the total of such Comptroller's checks as had been delivered but were not presented at the Bank for payment.

The above amounts are diminishing daily, as checks are called for and delivered, and as they were presented at the Bank for payment.

Further deponent says not.

R. B. McCandless.

Subscribed and sworn to before me this 27th day of August, 1946. —— ——, Notary Public, District of Columbia. My commission expires November 30, 1948.

[fol. 73] IN UNITED STATES DISTRICT COURT

SUMMONS—Filed September 11, 1946

To the above named Defendant:

You are hereby summoned and required to serve upon John R. Dethmers, Attorney General, Capitol Building, Lansing 2, Michigan, plaintiff's attorney, whose address —— —— —— an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

George M. Read, Clerk of Court, by Albert L. Alfred, Deputy Clerk. (Seal of Court.)

Date: Aug. 29, 1946.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[fol. 74] DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

No. 5824

JOHN R. DETHMERS, Attorney General in the name and on behalf of the People of the State of Michigan,

v.

PRESTON DELANO, Comptroller of the Currency of the U. S. et al.

SUMMONS IN CIVIL ACTION

Returnable not later than — days after service.
John R. Dethmers, Attorney for Plaintiff.

[fol. 75] RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the — day of August, 1946, I received the within summons and served the same upon John C. Lehr, United States Attorney for the Eastern District of Michigan, Southern Division and Bill of Complaint filed in the above matter.

Marshal's Fees
Travel $ —
Service

—— ——, United States Marshal, by —— ——, Deputy United States Marshal.

Subscribed and sworn to before me, a —— ——, this — day of August, 1946. —— ——. (Seal.)

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[fol. 76] RETURN ON SERVICE

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

File No. 5824

I hereby certify and return that on the 29th day of August, 1946, I served the annexed summons and the complaint filed in this cause on Preston Delano by handing to and leaving a copy of the summons and copy of said complaint with Preston Delano (by Registered Mail, return receipt requested) personally at Washington, D. C., in said District.

John J. Bare, U. S. Marshal, by John W. Ingram, Deputy.

Form 1—To be used for Personal Service.

[fol. 77] RETURN ON SERVICE

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

File No. 5824

I hereby certify and return that on the 29th day of August, 1946, I served the annexed summons and the complaint filed in this cause on Tom Clark, Attorney General, by handing to and leaving a copy of the summons and copy of said complaint with Tom Clark (By Registered Mail, return receipt requested) personally at Washington, D. C., in said District.

John J. Bare, U. S. Marshal, by John W. Ingram, Deputy.

Form 1—To be used for Personal Service.

[fol. 78] RETURN ON SERVICE

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

File No. 5824

I hereby certify and return that on the 29th day of August, 1946, I served the annexed summons and the complaint filed in this cause on John C. Lehr by handing to and leaving a copy of the summons and copy of said complaint with John C. Lehr personally at Detroit, Mich. in said District.

John J. Bare, U. S. Marshal, By John W. Ingram, Deputy.

Form 1—To be used for Personal Service.

[fol. 79] IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING—Filed May 2, 1947

To: Honorable Eugene F. Black, Attorney General for the State of Michigan.

Honorable Archie C. Fraser, Assistant Attorney General for the State of Michigan and State Public Administrator, Capitol Building, Lansing, Michigan.

You will please take notice that the motion of the defendant, Preston Delano, Comptroller of the Currency of the United States, to quash service of process and dismiss as to him, and the motion on behalf of the defendant, Joseph T. Connolly, to dismiss the petition of the plaintiff in the within cause as to him, will be brought on for hearing before the Honorable Arthur F. Lederle, District Judge, at his court room in the Federal Building, in the City of Detroit, on Monday, June 2, 1947, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard.

Robert S. Marx, Orville J. Thill, Lawrence I. Levi and Frank M. Wiseman, by Lawrence I. Levi, Attorneys for the defendants, 2443 National Bank Bldg., Detroit 26, Mich.—Cherry 6075.

Dated May 1, 1947.

[fol. 80] IN UNITED STATES DISTRICT COURT

ORDER SUBSTITUTING PLAINTIFF AND ATTORNEY FOR PLAINTIFF—Filed June 9, 1947

At a session of said court held in the Federal Building, in Detroit, on June 9, 1947.

Present: Hon. Arthur F. Lederle, District Judge.

In accordance with the request of counsel for plaintiff, consented to by counsel for defendants,

It is hereby ordered that Eugene F. Black, Attorney General of the State of Michigan, successor to the named plaintiff herein, be and he is hereby substituted as plaintiff herein, and as attorney for plaintiff herein.

Arthur F. Lederle, U. S. District Judge.

[fol. 81] IN UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL—Filed July 10, 1947

At a session of said court held in the Federal Building, Detroit, this 10th day of July, A. D., 1947.

Present; Honorable Arthur S. Lederle, District Judge.

This case having come on for hearing upon motion to quash and dismiss filed by defendant Preston Delano on August 13, 1946, and upon the motion to dismiss filed by defendant Joseph T. Connolly, also filed on August 13, 1946, and the court having heard the arguments of counsel in connection therewith and duly considered the briefs filed,

Now, therefore, it is ordered that said motions to quash and dismiss be, and they are hereby granted, and this case is hereby dismissed.

Arthur F. Lederle, District Judge.

[fol. 82] IN UNITED STATES DISTRICT COURT

ORDER CORRECTING DOCKET ENTRIES OF JUNE 9 AND 23, 1947—Filed September 4, 1947

At a session of said court held in the Federal Building, Detroit, Michigan on September 4, 1947.

Present: Honorable Arthur F. Lederle, District Judge.

This case having come on for oral arguments of defendants' motions to dismiss on June 9, 1947, on which date oral

arguments were heard and concluded and defendants submitted to the court a memorandum brief in support of their motions, and, in compliance with the request of counsel, the time for submitting plaintiff's reply brief was fixed at June 16, 1947 and the time for submitting defendant's reply to such reply brief was fixed at June 23, 1947, and on June 23, 1947 this latter time was further extended to July 14, 1947, plaintiff's reply brief having been submitted on June 16, 1947, and prior to July 10, 1947, defendants' counsel having advised the court that no reply to plaintiff's reply brief would be submitted so that the case was then ready for decision on motions to dismiss, and an order granting motions to dismiss having been entered on July 10, 1947, and it now appearing that the docket entries of this case, thru a clerical error show hearing of said motions to dismiss held in part on June 9, 1947 and continued to June 23, 1947 and a further continuance of said motions from June 23, 1947 to July 14, 1947,

[fol. 83] Now, therefor, the court sua sponte does hereby order that the docket entries of this case for June 9 and 23, 1947 be corrected to read as follows:

> "June 9, 1947—hearing held on motions to dismiss and the time for submitting briefs fixed at June 23, 1947."
>
> "June 23, 1947—defendants granted until July 14, 1947 for submitting reply to plaintiff's reply brief."

Arthur F. Lederle, District Judge.

[fol. 84] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO THE SIXTH CIRCUIT COURT OF APPEALS—Filed October 2, 1947

Notice is hereby given that Eugene F. Black, Attorney General, successor to John R. Dethmers, in the name and on behalf of the People of the State of Michigan, plaintiffs above named, hereby appeal to the Circuit Court of Appeals for the Sixth Circuit from the Order of Dismissal entered in this action on July 10, 1947.

Dated: October 2, 1947.

Eugene F. Black, Attorney General, by Archie C. Fraser, Assistant Attorney General and State Public Administrator, by Percival R. Piper, Assistant Attorney General, Attorneys for Plaintiff and Appellants.

[fol. 85] Bond on appeal for $250.00, filed October 2, 1947, omitted in printing.

[fol. 86] IN UNITED STATES DISTRICT COURT

DESIGNATION OF CONTENTS OF RECORD ON APPEAL—Filed October 9, 1947

Eugene F. Black, Attorney General, Archie C. Fraser and Percival R. Piper, Assistant Attorneys General, attorneys for plaintiff and appellant in the above entitled matter, designate the entire record and proceedings in said cause to be contained in the record on appeal, to wit:

1. Petition for Declaratory Judgment and Other Relief, including Exhibits "A" and "B" attached thereto.
2. Summons dated June 25, 1946 and returns of service attached thereto.
3. Appearance of Defendant, Joseph T. Connolly.
4. Stipulation.
5. Order Dissolving Restraining Order and Dismissing Order to Show Cause.
6. Order to Show Cause and Temporary Restraining Order.
7. Stipulation for Extension of Time of Connolly, Receiver, to Plead, dated July 11, 1946.

8. Order for Extension of Time of Connolly, Receiver, to Plead, dated July 12, 1946.

9. Stipulation for Extension of Time of Connolly, Receiver, to Plead, dated July 23, 1946.

10. Order for Extension of Time of Connolly, Receiver, to Plead, dated July 29, 1946.

[fol. 87] 11. Special appearance of Preston Delano, Comptroller of the Currency of the United States of America, and Motion to Quash Service of Process and to Dismiss Action.

12. Motion on Behalf of the Defendant, Joseph T. Connolly to Dismiss the Plaintiff's Petition.

13. Affidavit of R. B. McCandless in support of Motion to Dismiss.

14. Summons dated August 29, 1946 and Returns of Service attached thereto.

15. Notice of Hearing dated May 1, 1947.

16. Order Substituting Plaintiff and Attorney for Plaintiff.

17. Order of Dismissal, dated July 10, 1947.

18. Order Correcting Docket Entries of June 9 and 23, 1947, dated September 4, 1947.

Eugene F. Black, Attorney General; Archie C. Fraser, Percival R. Piper, Assistant Attorneys General, by Archie C. Fraser, Assistant Attorney General, Attorneys for Plaintiff, State Capitol, Lansing 2, Michigan.

Dated: October 7, 1947.

[fol. 88] IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO FILE RECORD ON APPEAL —Filed November 7, 1946

It is hereby Stipulated and Agreed, by and between the attorneys for the respective parties hereto that the time for filing the record on appeal be extended to December 7, A. D. 1947.

Eugene F. Black, Attorney General of Michigan; Archie C. Fraser, Assistant Attorney General and State Public Administrator, by Percival R. Piper, Assistant Attorney General, Attorneys for Plaintiff-Appellant. Robert S. Marx, Lawrence I. Levi, Orville J. Thill and Frank M. Wiseman, by Lawrence I. Levi, Attorneys for Defendant-Appellee, Joseph T. Connolly, as Receiver of First National Bank-Detroit, and as Detroit Representative of the Comptroller of the Currency of the United States.

Dated: November 6, 1947.

PRP:am.

[fol. 89] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME—Filed November 7, 1947

At a session of the said Court, held in the Federal Building, Detroit, Michigan, on November 7, 1947,

Present: Honorable Arthur F. Lederle, United States District Judge

Upon reading and filing the attached stipulation for extention of time to file record on appeal,

It is hereby Ordered, that the time within which the plaintiff and appellant may file the record on appeal and have the same docketed with the Clerk of the United States District Court on Appeals for the Sixth Circuit is hereby extended to December 7, 1947.

Arthur F. Lederle, United States District Judge.

[fol. 90] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO ADDITIONAL CONTENTS OF RECORD ON APPEAL—Filed November 7, 1947

It is hereby stipulated, by and between the attorneys for the below named parties hereto, that the following from the files and records herein may and shall be added to the record on appeal in the above entitled cause, this stipulation being supplementary and in addition to the designation of contents of the record heretofore filed herein by attorneys for plaintiff-appellant:

1. Calendar entries.
2. Notice of Appeal.
3. Bond on Appeal.
4. Designation of Contents of Record on Appeal.
5. Stipulation as to Additional Contents of Record on Appeal.
6. Stipulation Extending Time to File Record on Appeal.
7. Order Extending Time to File Record on Appeal.

[fol. 91] 8. Stipulation re Comparison of Record.

9. Certificate of Clerk.

Eugene F. Black, Attorney General, by Archie C. Fraser, Assistant Attorney General and State Public Administrator, by Percival R. Piper, Assistant Attorney General, Attorneys for Plaintiff-Appellant. Robert S. Marx, Lawrence I. Levi, Orville J. Thill and Frank M. Wiseman, by Lawrence I. Levi, Attorneys for Defendant-Appellee, Joseph T. Connolly, as Receiver of First National Bank-Detroit, and as Detroit Representative of the Comptroller of the Currency of the United States.

Dated: November 7th, 1947.

[fol. 92] IN UNITED STATES DISTRICT COURT

STIPULATION RE COMPARISON OF RECORD—Filed November 7, 1947

It is hereby stipulated by and between the attorneys for the respective parties hereto that the Record on Appeal as printed be certified and transmitted by the Clerk of the United States District Court for the Eastern District of Michigan to the United States Circuit Court of Appeals for the Sixth Circuit without comparison.

Eugene F. Black, Attorney General, by Archie C. Fraser, Assistant Attorney General and State Public Administrator, by Percival R. Piper, Assistant Attorney General, Attorneys for Plaintiff-Appellant. Robert S. Marx, Lawrence I. Levi, Orville J. Thill and Frank M. Wiseman, by Lawrence I. Levi, Attorneys for Defendant-Appellee, Joseph T. Connolly, as Receiver of First National Bank-Detroit, and as Detroit Representative of the Comptroller of the Currency of the United States.

Dated: November 7, 1947.

[fol. 93] IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO FILE RECORD ON APPEAL—Filed December 2, 1947

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto that the time for filing the record on appeal be extended to Tuesday, December 30, 1947.

Eugene F. Black, Attorney General of Michigan; Archie C. Fraser, Assistant Attorney General and State Public Administrator, by Percival R. Piper, Assistant Attorney General, Attorneys for Plaintiff-Appellant. Robert S. Marx, Lawrence I. Levi, Orville J. Thill, and Frank M. Wiseman, by Lawrence I. Levi, Attorneys for Defendant-Appellee; Joseph T. Connolly, as Receiver of First National Bank—Detroit, and as Detroit Representative of the Comptroller of the Currency of the United States.

Dated: December 2, 1947.

[fol. 94] In United States District Court

Order Extending Time to File Record on Appeal—Filed December 2, 1947

At a session of the said Court, held in the Federal Building, at Detroit, Michigan on December 2, 1947.

Present: Honorable Arthur F. Lederle, United States District Judge.

Upon reading and filing the attached stipulation for extension of time to file record on appeal,

It is hereby ordered, that the time within which the plaintiff and appellant may file the record on appeal and have the same docketed with the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, is hereby extended to December 30, 1947.

Arthur F. Lederle, United States District Judge.

[fols. 95-96] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 97] In the United States Court of Appeals for the Sixth Circuit

Cause Argued and Submitted—October 14, 1948

Before Hicks, Chief Judge, Martin and McAllister, Circuit Judges

This cause is argued by Julius H. Amberg and Archie C. Fraser for appellant and by Robert S. Marx for appellees and is submitted to the Court.

In United States Court of Appeals

Order—Filed November 30, 1948

The so-called "Chronology", filed and presented at the hearing of this cause by the advocate appearing for the appellees, has not been considered by the court and is

ordered to be stricken, for the reason that it carries beyond the record in the case and contains argumentative matter not presented consistently with the rules of this court.

[fol. 98] In United States Court of Appeals

Judgment—Entered November 30, 1948

Appeal from the District Court of the United States for the Eastern District of Michigan.

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of dismissal of the said District Court in this cause be and the same is hereby affirmed.

In United States Court of Appeals

Opinion—Filed November 30, 1948

Before Hicks, Chief Judge, Martin and McAllister, Circuit Judges

Martin, Circuit Judge:

Our appellate jurisdiction has been repeatedly invoked in litigation involving, in varying phases, the right of the State of Michigan to apply its statutes of escheat to deposits in the First National Bank-Detroit, a national bank in liquidation.

In *Starr, Attorney General* v. *O'Connor, Comptroller of the Currency*, 6 Cir., 118 F. (2d) 548 [decided March 14, 1941] certiorari denied 314 U. S. 695, we reviewed at length the state's escheat laws, construed relevant provisions thereof, and attempted to demonstrate from highest authority that, while national banks are subject to state laws which do not interfere with the purposes of their creation, or tend to impair or destroy their efficiency as federal agencies, or conflict with the paramount law of the United States, the then existing Michigan escheat procedure con-

[fol. 99] stituted an unlawful interference with the liquidation of a national bank. We pointed to the decisions of the Supreme Court in *Cook County National Bank* v. *United States*, 107 U. S. 445, 448; *Davis* v. *Elmira Savings Bank*, 161 U. S. 445, and *First National Bank of San Jose* v. *State of California*, 262 U. S. 366.

After our opinion was promulgated, the legislature of Michigan amended the state laws of escheat by Act No. 170, Public Acts of 1941. In *Rushton, Att'y Gen.* v. *Schram*, 6 Cir., 143 F. (2d) 554 [decided May 31, 1944], we held that the amendatory act did not apply *retroactively* to dormant deposits in the insolvent First National Bank-Detroit. The majority opinion in that case assumed upon principles of comity that the state legislature had not intended to enact a law, effective retroactively, which would interfere with the complete system provided by Congress for winding up national banks and distributing their effects in a manner neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates.

We expressed the further presumption that the Michigan legislature had not designed to nullify the decision of this court in the *Starr* case, but had enacted a law intended to operate *prospectively* only. *Anderson National Bank* v. *Luckett*, 321 U. S. 233 (which was announced after the filing date of this court's opinion in *Starr, Att'y Gen.* v. *O'Connor, Comptroller of the Currency, supra*), was distinguished upon the ground that, there, the Supreme Court's adjudication related to the applicability of a state's laws of escheat to deposits in a *solvent and operating* national bank. One of our judges, however, based concurrence in the result reached upon the proposition that the Michigan amendatory act operated in the context as an unlawful interference with the liquidation of a national bank as provided for in Title 12, section 194, of the United States Code. The majority opinion did not gainsay this, but attributed to the Michigan legislature no intended interference with the liquidation of the First National Bank-Detroit.

[fol. 100] In *Starr, Att'y Gen.* v. *Schram*, 6 Cir., 143 F. (2d) 561 [decided on the same day, May 31, 1944], this court, in unanimity, affirmed the decree of the district court to the effect that the escheat statutes of Michigan, *including Act 170 of the Public Acts of Michigan for 1941*, constitute an unlawful interference with the liquidation of an insolvent

national bank and are inapplicable to the receivership of the First National Bank-Detroit. The decree below was reversed in part, but not in respect to the clear-cut holding just stated.

The same statute, Act 170, is involved in the present litigation, which on its merits relates only to the attempt of the State of Michigan to apply its escheat laws to deposits where depositors have had their claims allowed by the receiver, the Comptroller of the Currency, or both, and have, since that time, either died, disappeared, failed to receive or to cash dividend checks issued to them.

Both defendants in the district court, Delano, Comptroller, and Connolly, Receiver, moved to dismiss the instant action. The Comptroller of the Currency, in his special appearance, combined his motion to dismiss with a motion to quash the service upon the ground that he could not, without his consent, be properly sued outside the District of Columbia. The motion of the receiver also challenged the jurisdiction of the district court for the eastern district of Michigan, and additionally pleaded no cause of action.

The district court granted both motions, as made. Assuming without deciding that the action was brought in the right district, we are of opinion that the judgment of dismissal should be affirmed on the merits. The present action brought by the State of Michigan to apply its laws of escheat in the circumstances related constitutes an unlawful interference with the liquidation of a national bank upon the same principles and authority fully discussed in our previous opinions. The valiant spirit displayed in continuing litigation by successive attorneys general of Michigan and able special counsel retained to aid them is commendable, but we think their present battle is fought upon [fol. 101] essentially the same legal grounds upon which former contests have been waged. The authorities which they now submit have been previously carefully considered and rejected as failing to sustain their major objective.

The fact that we encounter here proven claims rather than dormant deposits supplies no logical basis for a declination to apply settled doctrine. The order of dismissal is affirmed.

In United States Court of Appeals

Motion for Substitution of Appellant and Attorney—Filed January 11, 1949

Stephen J. Roth, Attorney General of the State of Michigan, successor in said office to Eugene F. Black, respectfully shows this Court:

1. After the rendition of judgment in the above-entitled cause on the 30th day of November, 1948, by this Court, the said Stephen J. Roth, on January 1, 1949, succeeded Eugene F. Black as Attorney General of the State of Michigan.

2. Stephen J. Roth, in the name and on behalf of the People of the State of Michigan, may desire to prosecute an appeal from said judgment of this Court to the Supreme Court of the United States, and to petition that Court for certiorari.

Wherefore Stephen J. Roth moves the Court for an order substituting himself in the place and stead of said Eugene [fol. 102] F. Black as appellant and as attorney for appellant in this action.

Dated January 11, 1949.

Stephen J. Roth, Attorney General of the State of Michigan, by Julius H. Amberg, Special Assistant Attorney General of Michigan, One of Appellant's Attorneys.

Consent: (S.) Robert S. Marx.

In United States Court of Appeals

Order of Substitution—Filed January 11, 1949

It appearing to the Court that Stephen J. Roth has succeeded Eugene F. Black to the office of Attorney General of the State of Michigan, and that said Stephen J. Roth has moved this Court to be substituted as appellant and as an attorney for appellant in the place and stead of said Eugene F. Black in the above-entitled cause:

It Is Ordered that Stephen J. Roth be and he is hereby substituted as appellant and as an attorney for appellant in the place and stead of said Eugene F. Black.

Dated: January 11, 1949.

Thomas F. McAllister, United States Circuit Judge, Sixth Circuit.

[fol. 103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

No. 10,615

STEPHEN J. ROTH, Attorney General, Successor to Eugene F. Black, Attorney General, in the Name and on behalf of the People of the State of Michigan, Appellant,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and Joseph T. Connolly, as Receiver of the First National Bank-Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America, Appellee

PETITION FOR ALLOWANCE OF APPEAL—Filed January 26, 1949

The above mentioned appellant respectfully shows that a judgment was rendered in the above-entitled cause by the above-entitled Circuit Court of Appeals on the 30th day of November, 1948, *sub nom.* Eugene F. Black, Attorney General vs. Preston Delano, Comptroller of the Currency of the United States, et al., affirming the order of the District Court of the Eastern District of Michigan, Southern Division, and that this cause is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Appellant files with this petition his assignment of errors setting out separately and particularly each error asserted by him.

Appellant presents with this petition a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court has jurisdiction upon appeal to review the aforesaid judgment.

[fol. 105] Wherefore the appellant prays that an appeal be allowed him in the above-entitled cause and that the Clerk of the United States Circuit Court of Appeals for the Sixth Circuit be directed to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in said assignment of errors herewith filed may be reviewed, and if error be found, corrected according to the laws of the United States.

Dated: January 25, 1949.

Stephen J. Roth, Attorney General. Edmund E. Shepherd, Solicitor General. Archie C. Fraser, Assistant Attorney General, State Capitol, Lansing 2, Michigan. Julius H. Amberg, Special Assistant Attorney General, 500 Michigan Trust Building, Grand Rapids 2, Michigan, Attorneys for Appellant.

[fol. 106] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 26, 1949

Now comes, Stephen J. Roth, as Attorney General of the State of Michigan and successor to Eugene F. Black, heretofore Attorney General of said State, in behalf of the People of the State of Michigan and as plaintiff and appellant in connection with his petition for appeal, and files the following assignments of error on which he will rely on his appeal to the Supreme Court of the United States from the judgment and decree of the Circuit Court of Appeals for the Sixth Circuit, filed and entered on November 30, 1948, *sub nom.* Eugene F. Black, Attorney General, v. Preston Delano, Comptroller of the Currency of the United States of America, et al., viz.:

[fol. 107] The said Court erred:

1. In affirming the order of the District Court of the United States for the Eastern District of Michigan, Southern Division, which on July 10, 1947, dismissed the petition of plaintiff filed in said Court upon defendant Connolly's motion to dismiss said petition.

2. In not reversing the said order of said District Court and in not requiring said defendant Connolly, as Receiver of First National Bank-Detroit and Representative of the Comptroller of the Currency, to answer said petition.

3. In not declaring and adjudging that Act No. 238 of the Public Acts of Michigan for the year 1897 and amendments thereof, being Sections 13,455 to 13,477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, being the law of said State relating to escheatable estates and abandoned property, is valid and is applicable to First National Bank-Detroit, a national banking association heretofore declared insolvent, and that the defendant Joseph T. Connolly, as Receiver of said bank and as Representative of the Comptroller of the Currency, is bound by said Michigan law with respect to proven deposits in said bank.

4. In holding that said Michigan law, if applied to proven claims of depositors in First National Bank-Detroit in liquidation, constitutes an unlawful interference with the liquidation of a national bank and is invalid as repugnant to the National Bank Law of the United States, and in particular to Sec. 194 thereof (Title 12, U. S. Code, Sec. 194; Revised Statutes 5236).

5. In not holding (although assuming) that the District Court of the United States for the Eastern District of Michigan, Southern Division, had jurisdiction over the sub-
[fol. 108] ject matter of the petition of the plaintiff filed in said District Court.

6. In not holding (although assuming) that said suit would lie against defendant Connolly, Receiver of said bank and as Representative of the Comptroler, with respect to the application of said Michigan law to proven claims of depositors in said bank.

7. In not holding (although assuming) that defendant Connolly is, and at the time of institution of suit was, Receiver of said bank and subject to said suit.

8. In the rendition of the final judgment and decree in this cause filed and entered November 30, 1948.

Stephen J. Roth, Attorney General. Edmund E. Shepherd, Solicitor General. Archie C. Fraser, Assistant Attorney General, State Capitol, Lansing 2, Michigan. Julius H. Amberg, Special Assistant Attorney General, 500 Michigan Trust Building, Grand Rapids 2, Michigan, Attorneys for Appellant.

[fol. 109] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 26, 1949

It appearing to the Court in the above-entitled cause that the appellant has filed his petition for appeal to the Supreme Court of the United States, and has filed therewith his assignment of errors, and also his statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question;

[fol. 110] It is hereby ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the judgment rendered in said cause on the 30th day of November, 1948, *sub nom.* Eugene F. Black, Attorney General vs. Preston Delano, Comptroller of the Currency of the United States, et al., and that appellant give an appeal bond with good and sufficient surety and conditioned according to law in the penal sum of $1,000.00.

Dated: January 25, 1949.

Thomas F. McAllister, United States Circuit Judge, Sixth Circuit.

[fols. 111-113] Bond on appeal for $1,000.00 approved and filed Jan. 26, 1949, omitted in printing.

[fol. 114] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed January 26, 1949

To: The Clerk

Please prepare a transcript of the record in the above-entitled cause in the matter of appeal therein to the Supreme Court of the United States, and include in said transcript in the order given below the following:

1. The entire record and proceedings, as received by you in the above-entitled cause in the United States District Court for the Eastern District of Michigan, Southern Division.

2. The entire record and proceedings in the above-entitled cause in this Court.

3. Petition for appeal to the Supreme Court.

4. Assignment of errors.

[fol. 115] 5. Statement as to the jurisdiction of the Supreme Court of the United States.

6. Order allowing the appeal and fixing the bond.

7. The appeal bond.

8. Motion to substitute appellant and attorney for appellant.

9. Order substituting appellant and attorney for appellant.

10. Consent to substitution as appellant and attorney for appellant.

11. Service of appeal papers and notice to appellee of Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States.

12. Citation.

13. Praecipe for transcript of record.

14. Acknowledgment of service of notice and appeal papers on appellee.

Dated: January 25, 1949.

Stephen J. Roth, Attorney General. Edmund E. Shepherd, Solicitor General. Archie C. Fraser, Assistant Attorney General, State Capitol, Lansing 2, Michigan. Julius H. Amberg, Special Assistant Attorney General, 500 Michigan Trust Building, Grand Rapids 2, Michigan, Attorneys for Petitioner.

[fol. 116] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

CONSENT TO SUBSTITUTION AS APPELLANT AND ATTORNEY FOR APPELLANT—Filed January 26, 1949

I, Eugene F. Black, consent that Stephen J. Roth, my successor in the office of Attorney General of the State of Michigan, be substituted in my place and stead as appellant and attorney for appellant in the above-entitled cause.

Dated January 11, 1949.

Eugene F. Black.

[fols. 117-118] Citation in usual form showing service on Robert S. Marx, omitted in printing.

[fol. 119] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 120] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed February 19, 1949

Pursuant to Rule 13, paragraph 9, of the Revised Rules of this Court, appellant states that he intends to rely upon all the points in his assignment of errors.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for consideration of the points relied upon.

Dated: February 14, 1949.

Stephen J. Roth, Attorney General. Edmund E. Shepherd, Solicitor General. Archie C. Fraser, [fol. 121] Assistant Attorney General, State Capitol, Lansing 2, Michigan. Julius H. Amberg, Special Assistant Attorney General, 500 Michigan Trust Building, Grand Rapids 2, Michigan, Attorneys for Appellant.

Service of the foregoing statement of appellant as to points to be relied upon and parts of the record necessary for consideration thereof is hereby acknowledged.

Dated: Feb. 15, 1949.

Robert S. Marx, Attorneys for Appellee.

[fol. 121a] [File endorsement omitted.]

[fol. 122] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION AND OF THE MOTION TO DISMISS OR AFFIRM —March 28, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court and

of the motion to dismiss or affirm is postponed to the hearing of the case on the merits.

Endorsed on Cover: Enter Edmund E. Shepherd. File No. 53,568 U. S. Court of Appeals, Sixth Circuit, Term No. 566. Stephen J. Roth, Attorney General of the State of Michigan, etc., Appellant, vs. Preston Delano, Comptroller of the Currency of the United States of America, et al. Filed February 16, 1949. Term No. 566 O. T. 1948.